TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 26 300

THE LORAIN JOURNAL COMPANY, SAMUEL A. HORVITZ, ISADORE HORVITZ, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

FILED APRIL 9, 1951.

PROBABLE JURISDICTION NOTED APRIL 30, 1951.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

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[fol. 1] [File endorsement omitted]

In the United States District Court for the Northern District of Ohio, Eastern Division

Civil No.

UNITED STATES OF AMERICA, Plaintiff,

v.

THE LORAIN JOURNAL COMPANY, SAMUEL A. HORVITZ, ISADORE HORVITZ, D. P. SELF, and FRANK MALLOY, Defendants

COMPLAINT—Filed September 22, 1949

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the hereinafter named defendants, and complains and alleges as follows:

I

Jurisdiction and Venue

1. This complaint is filed and this action is instituted against the defendants under Section 4 of the Act of Congress of July 2, 1890 (c. 647, 26 Stat. 209, as amended) entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, in order to prevent and restrain continuing violations by the defendants as hereinafter alleged, of Sections 1 and 2 of said Act.

2. All defendants inhabit, transact business and are found within the Eastern Division of the Northern District of Ohio.

[fol. 2] II

Description of Defendants

3. The Lorain Journal Company is made a defendant herein. It is a corporation organized and existing under and by virtue of the laws of the State of Ohio. It has offices in the City of Lorain, Lorain County, Ohio, and in the Midland Building in Cleveland, Ohio, and publishes a newspaper known as the *Lorain Journal and the Times Herald* (hereinafter called the *Lorain Journal*).

4. Samuel A. Horvitz, an individual residing at 16700 Parkland Drive, Shaker Heights, Ohio, is made a defendant herein. Said defendant is Vice-President, Secretary and a director of The Lorain Journal Company.

5. Isadore Horvitz, an individual residing at 18200 Shaker Boulevard, Shaker Heights, Ohio, is made a defendant herein. Said defendant is President, Treasurer and a director of The Lorain Journal Company.

6. D. P. Self, an individual residing at 1029 12th Street, Lorain, Ohio, is made a defendant herein. Said defendant is Business Manager of the *Lorain Journal.*

7. Frank Malloy, an individual residing at 630 Pasadena Avenue, Sheff Lake, Lorain, Ohio, is made a defendant herein. Said defendant is Editor of the *Lorain Journal.*

III

Nature of Trade and Commerce

A. *Newspapers and Radio Stations Involved.*

8. The *Lorain Journal* is the only newspaper of general daily (excluding Sunday) circulation published in Lorain, Ohio. It is distributed and sold in Lorain, Elyria, and in various other towns in Lorain County. The *Lorain Sunday News* is the only newspaper of general circulation published every Sunday in Lorain, Ohio and distributed and sold in that city.

9. The *Elyria Chronicle-Telegram,* published by The Lorain County Printing and Publishing Company (hereinafter called Lorain County P. & P. Co.), is the only newspaper of general daily (excluding Sunday) circulation [fol. 3] published in the afternoon in Elyria, Ohio and distributed and sold in that city and in various other towns in Lorain County but not in the City of Lorain.

10. The radio broadcasting stations having call letters WEOL and WEOL-FM, owned and operated by the Elyria-Lorain Broadcasting Company, broadcast daily over frequencies of 930 kc. and 107.3 mc. respectively. These broadcasting stations operate studios in Elyria and Lorain, Ohio. Their broadcasts are heard regularly by many persons in (a) Lorain County and elsewhere in the State of Ohio, and (b) in other states, including Michigan, Indiana, and Pennsylvania. These stations broadcast news, advertising and entertainment to listeners located in said states.

11. The *Lorain Journal*, the *Lorain Sunday News*, and radio broadcasting stations WEOL and WEOL-FM are the only significant sources of local news, advertising and other information disseminated regularly for residents of Lorain, Ohio.

8. *News and Advertising.*

12. A substantial amount of news and other information is gathered from all parts of the United States and other countries, and is distributed and delivered by various means in interstate and foreign commerce to publishers of newspapers and operators of radio broadcasting stations in Lorain, Ohio, and Elyria, Ohio. Newspapers and radio broadcasting stations distribute and disseminate this news to persons in Lorain, Elyria and the vicinity, and also to persons outside the State of Ohio.

13. Advertising at compensatory rates is essential to the operation both of newspapers and of radio broadcasting stations at Lorain, Ohio and Elyria, Ohio. Such newspapers and radio stations, in arranging for advertisements, cause a continuous flow in interstate commerce of substantial amounts of advertising copy, contracts, and checks between the advertisers and the newspaper publishers or radio station operators. Newspaper and radio stations at Lorain and Elyria distribute and disseminate such adver- [fol. 4] tising to persons in Elyria, Lorain and vicinity and also to persons outside the State of Ohio.

C. *Supplies.*

14. Substantial amounts of newsprint paper and ink are manufactured at various places in the United States and Canada and are shipped in interstate commerce to newspaper publishers at Lorain, Ohio and Elyria, Ohio for use in publishing these newspapers. In addition, substantial amounts of advertising mats, type, cuts and other supplies are shipped in interstate commerce from advertisers located outside the State of Ohio to newspaper publishers at Lorain and Elyria to be used in publishing newspaper advertisements.

15. Records of musical and other transcriptions are manufactured outside the State of Ohio and are shipped in interstate commerce to operators of radio stations at Lorain and Elyria to be played during broadcast programs.

D. *Nationally Advertised Products.*

16. Newspaper and radio advertising is essential in developing, maintaining, and extending a market for the sale of goods and services. A large variety and substantial amounts of goods and services produced and distributed by persons located in the various states of the United States, other than Ohio, are advertised and offered for sale in Ohio by means of advertisements published in newspapers in Lorain and Elyria, or broadcast over radio stations at Lorain and Elyria. Sales of such products and services are made in interstate commerce to purchasers in Lorain, Elyria, and vicinity as a result of advertisements published in Lorain and Elyria newspapers or broadcast by Lorain and Elyria radio stations.

IV

Offenses Charged

17. Commencing some years ago (the exact date being presently unknown to the plaintiff), and continuously thereafter to the date of the filing of this complaint, the defend- [fol. 5] ants and others to the plaintiff unknown, have been engaged in a combination and conspiracy in restraint of the above described interstate trade and commerce in news and advertising, supplies, and nationally advertised products in violation of Section 1 of the Sherman Act. Commencing some years ago (the exact date being presently unknown to the plaintiff), and continuously thereafter to the date of the filing of this complaint, the defendants and others to the plaintiff unknown, have been engaged in a combination and conspiracy to monopolize the above described interstate trade and commerce in the dissemination of news, advertising and other information in violation of Section 2 of the Sherman Act. Commencing some years ago (the exact date being presently unknown to the plaintiff), and continuously thereafter to the date of the filing of this complaint, the defendants and others to the plaintiff unknown, have attempted to monopolize the above described interstate trade and commerce in the dissemination of news, advertising and other information in violation of Section 2 of the Sherman Act. The defendants have threatened to and will continue said offenses unless the relief hereinafter prayed for in this complaint is granted.

18. The aforesaid combinations and conspiracies have consisted of a continuing concert of action among the defendants and others to the plaintiff unknown, the substantial terms of which have been, from time to time, that the defendants:

(a) Undertake to acquire ownership of newspapers and radio broadcasting facilities in Lorain County, Ohio, which compete with defendant The Lorain Journal Company;

(b) Threaten to refuse and refuse to publish in the *Lorain Journal* advertisements by those persons, firms and corporations who advertise or propose to advertise over the radio broadcasting facilities of the Elyria-Lorain Broadcasting Company;

(c) Threaten to refuse and refuse to publish in the *Lorain Journal* advertisements by those persons, firms and corporations who advertise or propose to advertise in the *Lorain Sunday News;*

[fol. 6] (d) Attempt to persuade and persuade employees of the *Lorain Sunday News* and the Elyria-Lorain Broadcasting Company to leave their respective employments;

(e) Agree with Lorian County P. & P. Co. that it will not circulate copies of the *Elyria Chronicle-Telegram* with- the City of Lorain, Ohio; and

(f) Agree with Lorain County P. & P. Co. that it will not solicit or accept advertisements from merchants advertising for the sale of goods or services in the City of Lorain, Ohio.

19. Pursuant to the aforesaid combinations and conspiracies to restrain and to monopolize, and in an attempt to monopolize, the aforesaid trade and commerce, the defendants, among other things, have:

(a) Attempted to purchase the *Elyria Chronicle-Telegram* and the Elyria-Lorian Broadcasting Company;

(b) Cancelled the advertising contracts with the *Lorain Journal* of the following persons, firms and corporations because they advertised over the radio broadcasting facilities of the Elyria-Lorain Broadcasting Company on the approximate dates indicated:

Mrs. Ruth Stevens The Coliseum Lorain, Ohio	October 25, 1948

Dan D'Andrea D'Andrea House of Music Lorain, Ohio	October 25, 1948
Sol Dinn Dinn's Department Store Lorain, Ohio	November 10, 1948
Eldred Stationers Lorain, Ohio	Fall of 1948
Leo Falencki Falencki Hardware Lorain, Ohio	Fall of 1948
Dominic Richi Richi's Tavern Amherst, Ohio	February 15, 1949
Donald A. Heisner Heisner Radio Shop Lorain, Ohio	December 9, 1948
[fol. 7] Henry Kohlmyer Kohlmyer Hardware Lorain, Ohio	November, 1948
Joseph W. Brochu Kool-Vent Awning Co. Lorain, Ohio	February 3, 1949
Robert Tebbel The Kroger Company Cleveland, Ohio	December 27, 1948
G. W. Marshall Marshall's Auto Service Lorain, Ohio	November 2, 1948
W. C. McConnell W. C. McConnell, Inc. Lorain, Ohio	October 25, 1948
H. H. Holbrook Maytag Lorain Co. Lorain, Ohio	October 25, 1948
H. D. Murphy Lake Erie Oil Co. Lorain, Ohio	October 27, 1948

Nat Rosenbaum Nat's Natty Shop Lorain, Ohio	December, 1948
Roy Wissman Wissman Jewelers Lorain, Ohio	November, 1948
Leonard F. Oldfield Electric Sewer Cleaning Co. Amherst, Ohio	November, 1948

(c) Refused to accept advertisements of the following persons, firms and corporations while they advertised over the radio broadcasting facilities of the Elyria-Lorain Broadcasting Company *of* the approximate dates indicated:

Cornelius A. Hageman Hageman Supply Co. Lorain, Ohio	Fall of 1948
Harold Pyle Central Bank Lorain, Ohio	Late October, 1948
Ricci Tailors Lorain, Ohio	December, 1948
Mrs. Margaret Ware Dr. Pepper Bottling Co. Elyria, Ohio	March, 1949

[fol. 8] (d) Notified the persons, firms and corporations listed below that the *Lorain Journal* would not accept advertisements from those advertisers who advertise over the radio broadcasting facilities of the Elyria-Lorain Broadcasting Company:

Fred C. Williams Atkinson & Williams Lorain, Ohio	Robert Tebbel The Kroger Company Cleveland, Ohio
Mrs. Ruth Stevens The Coliseum Lorain, Ohio	Leonard F. Oldfield Electric Sewer Cleaning Co. Amherst, Ohio
Sol Dinn Dinn's Department Store Lorain, Ohio	Joseph Lepon Lee Furniture Lorain, Ohio

Paul Driscol
Driscol Music Store
Lorain, Ohio

Leo Falencki
Falencki Hardware
Lorain, Ohio

S. C. Miller
B. F. Goodrich Co.
Lorain, Ohio

Paul M. Grubb
Avon Lakes Theater
Avon Lakes, Ohio

Cornelius A. Hagemman
Hageman Supply Co.
Lorain, Ohio

August Ilg
Ohio Theater
Lorain, Ohio

Henry Kohlmyer
Kohlmyer Hardware
Lorain, Ohio

Joseph W. Brochu
Kool-Vent Awning Co.
Lorain, Ohio

George G. Llewellyn
Llewellyn Motor Co.
Lorain, Ohio

Morris Mayer
Mayers Hardware
Lorain, Ohio

W. C. McConnell
W. C. McConnell, Inc.
Lorain, Ohio

H. D. Murphy
Lake Erie Oil Co.
Lorain, Ohio

Nat Rosenbaum
Nat's Natty Shop
Lorain, Ohio

Roy Wissman
Wissman Jewelers
Lorain, Ohio

James A. Resar
519 Lodi Street
Elyria, Ohio

(e) Refused to renew the advertising contract of Sears, Roebuck and Co. in 1943 with the *Lorain Journal* because that company advertised in the *Lorain Sunday News.*

(f) Attempted to dissuade the following persons, firms and corporations from advertising in the *Lorain Sunday News:*

Lee Richards
Ohio Fuel Gas Co.
Lorain, Ohio

[fol. 9] Leo Murray
J. C. Penney Co.
Lorain, Ohio

Fred C. Williams
Atkinson & Williams
Lorain, Ohio

Stone's Grill
Lorain, Ohio

Simon Gary
Gary Motor Sales, Inc.
Lorain, Ohio

(g) Exerted pressure upon the following persons, firms and corporations to cancel their advertising contracts with *Lorian Sunday News:*

August Ilg Ohio Theater Lorain, Ohio	Sears, Roebuck and Co. Lorain, Ohio
Roy Wissman Wissman Jewelers Lorain, Ohio	Smith & Gerhardt Lorain, Ohio
Palace Theater Lorain, Ohio	Tivoli Theater Lorain, Ohio

(h) Attempted to persuade employees of the *Lorain Sunday News* and the Elyria-Lorain Broadcasting Company to leave their respective employments;

(i) Made an agreement with Lorain County P. & P. Co. pursuant to which said company has refrained from circulating copies of the *Elyria Chronicle-Telegram* within the City of Lorain, Ohio; and

(j) Made an agreement with Lorain County P. & P. Co. pursuant to which said company has not solicited or accepted for publication in the *Elyria Chronicle-Telegram* advertisements for the sale of goods or services in the City of Lorain, Ohio.

V

Effects

20. The effects of the aforementioned combinations and conspiracies, and attempt to monop-lize, among others, have been and are:

(a) To restrain the aforesaid trade and commerce among the several states in news and advertising, supplies and nationally advertised products;

(b) To monopolize the aforesaid trade and commerce among the several states in the dissemination of news, advertising and other information;

[fol. 10] (c) To compel advertisers in the *Lorain Journal* to refrain from advertising over the broadcasting facilities of the Elyria-Lorain Broadcasting Company and in the *Lorain Sunday News;*

(d) To deprive advertisers over the broadcasting facili-

ties of the Elyria-Lorain Broadcasting Company of the opportunity to advertise in the *Lorain Journal;*

(e) To irreparably injure competitors of the *Lorain Journal* in the operations of their businesses as a result of their inability to obtain advertising contracts from those persons, firms, and corporations who advertise in the *Lorain Journal;* and

(f) To deny various persons, firms and corporations free access to channels of advertising in Elyria and Lorain, Ohio, with consequent irreparable injury to their operations.

Relief Sought

Wherefore, plaintiff prays:

1. That a preliminary injunction issue, pending final adjudication of the merits of this complaint, enjoining the defendants from refusing to publish in the *Lorain Journal* at its current advertising rates and under its customary terms and conditions, the advertisements of any person, firm or corporation who offers to pay in advance for such advertisements and who advertises on the facilities of the Elyria-Lorain Broadcasting Company or in the *Lorain Sunday News*, or both; provided that nothing in said injunction shall prohibit the defendants from refusing to publish any advertisement, the publication of which would constitute a violation of any law of the State of Ohio or of the United States;

2. That the Court adjudge and decree that the defendants have combined and conspired to restrain and to monopolize and have attempted to monopolize interstate trade and commerce in violation of Sections 1 and 2 of the Sherman Act;

[fol. 11] 3. That each of the defendants be enjoined from acquiring ownership or control of the capital stock or assets of any competing publication or radio broadcasting facilities;

4. That each of the defendants, and all persons, firms and corporations acting in his or its behalf or under his or its direction or control, be enjoined from declining to accept at non-discriminatory terms and conditions the advertisements of any advertiser on the ground, in whole or in part, expressed or implied, that said advertiser also uses the

advertising facilities of any other person, firm or corporation;

5. That each of the defendants be enjoined from being a party to any agreements or understandings under the terms of which any party to said agreements or understandings refrains from circulating a newspaper in any area;

6. That each of the defendants be enjoined from being a party to any agreements or understandings under the terms of which any party to said agreements or understandings refrains from soliciting or accepting advertising of persons, firms and corporations located in the area served by any other party to said agreements or understandings;

7. That the plaintiff have such other, further and different relief as the case may require and the Court may deem just and proper in the premises;

8. That the plaintiff recover its taxable costs.

Dated: — —, 1949.

(S.) J. Howard McGrath, Attorney General; (S.) Herbert A. Bergson, Assistant Attorney General; (S.) Don C. Miller, United States Attorney; (S.) Victor H. Kramer, Trial Attorney; (S.) Baddia J. Rashid, (S.) Norman H. Seidler, (S.) Frank J. Oberg, (S.) Eugene C. Peck II.

[fol. 12] *Duly sworn to by Baddia J. Rashid. Jurat omitted in printing.*

[fol. 13] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED JOINT AND SEVERAL ANSWER OF DEFENDANTS TO PLAINTIFF'S COMPLAINT AS AMENDED—Filed January 13, 1950

I

As to Jurisdiction and Venue

(Paragraphs 1 and 2)

1. They admit that jurisdictional and venue factors are alleged in paragraphs 1 and 2. They aver, however, that

the underlying and supporting facts will not establish acts within or prohibited by the Sherman Act, so-called, and, therefore, deny that this Court has or will have jurisdiction of the subject matter.

II

As to Description of Defendants

(Paragraphs 3 through 7)

2. They admit the description and status of the defendants in paragraphs 3 to 7, both inclusive; and aver, however, that defendants D. P. Self resides at 1817 Lakeview Avenue, Lorain, Ohio, instead of the address set forth, and defendant designated Frank Malloy is named Frank Maloy and resides at 108 Waverly Place, Lorain, Ohio, instead of the address set forth.

III

As to Nature of Trade and Commerce

(Paragraphs 8 through 16)

A. *In Reference to Newspapers and Radio Stations Involved.* (8 through 11.)

3. They admit the averments of paragraph 8 as they relate to The Lorain Journal. For want of knowledge, all else in paragraph 8 is denied.

[fol. 14] 4. They admit that the Elyria Chronicle-Telegram is a newspaper of general daily (excluding Sunday) circulation in Elyria, Ohio, and various other towns and cities in Lorain County. They deny all else contained in paragraph 9.

5. They admit there are radio broadcasting stations having call letters WEOL and WEOL-FM, as alleged in paragraph 10, and operating from Elyria, Ohio; and for want of knowledge they deny all else in that paragraph.

6. They deny that The Lorain Journal, the Lorain Sunday News and said radio broadcasting stations are the only significant *sources* of local news, advertising and other information disseminated regularly for residents of Lorain, Ohio, as alleged in paragraph 11.

B. *In Reference to News and Advertising* (12 and 13).

7. They admit the general sources of news, distribution and dissemination thereof, in Lorain, Elyria and vicinity, as in paragraph 12 alleged, and aver that the Lorain Journal in no substantial way distributes and disseminates news outside of Ohio; and deny specifically that the facts set forth in paragraph 12 and thus claimed are relevant to the subject matter and, if relevant thereto, are material to the issues presented or the claims made herein. They deny all else alleged in paragraph 12 of the complaint.

8. They admit that, as in paragraph 13 averred, advertising is important—though not essential—to the operation of a newspaper. They deny that the alleged arranging for such advertising results in or affects interstate commerce, as contemplated by the Sherman Anti-Trust Act, and deny that the facts set forth in said paragraph and thus claimed are relevant to the subject matter and, if relevant thereto, are material to the issues presented or the claims made herein. They deny all else alleged in paragraph 13 of the complaint.

C. *In Reference to Supplies* (14 and 15).

9. They admit generally the facts in paragraph 14 as they relate to The Lorain Journal; for want of information they deny specifically those facts as to other newspapers. They deny that the facts set forth in said paragraph and [fol. 15] thus claimed are relevant to the subject matter and, if relevant thereto, are material to the issues presented or the claims made herein.

10. For want of specific information they deny the averments of paragraph 15.

D. *In Reference to Nationally Advertised Products* (16).

11. Defendants admit that newspaper advertising is important in developing, maintaining and extending a market for the sale of goods and services. They admit also that goods and services produced and distributed outside of Ohio are advertised and offered for sale in Ohio. They deny that sales of such products as a result of such advertising, as alleged in paragraph 16 and elsewhere in the complaint, are, in fact or in law, made in or affect interstate commerce in Lorain, Elyria and vicinity.

12. Defendants deny that The Lorain Journal is engaged in interstate commerce and that the facts alleged in the bill of complaint present a case within the Sherman Act; and they aver the contrary. They deny that the Elyria-Chronicle-Telegram, The Lorain County Printing and Publishing Company, the Lorain Sunday News and the Elyria-Lorain Broadcasting Company, as designated in the complaint, are engaged in interstate commerce.

IV

As to Offenses Charged

(Paragraphs 17 through 19)

13. They deny, as alleged in paragraph 17, that they or any of them violated either Section 1 or 2 of the Sherman Act by having engaged in a combination and conspiracy with each or any of the others, or with others either

(a) In restraint of interstate trade and commerce,
(b) To monopolize interstate trade and commerce,
(c) In an attempt to monopolize interstate trade and commerce, in news, advertising, supplies and nationally advertised products; and deny that they, each, any or all of them have in any other manner attempted to monopolize interstate trade and commerce, in the things aforesaid.

14. They deny, as in paragraphs 18 and 19 alleged, that [fol. 16] they, each, any or all of them have acted in "continuing concert" with themselves or others, and thus composed and created and accomplished the "combinations and conspiracies and attempt to monopolize" elsewhere alleged in the complaint, by doing those acts set forth in subsections (a) to (f), both inclusive, of paragraph 18; and deny that "pursuant to said combinations and conspiracies and attempt to monopolize" they, each, any or all of them did those things in subsections (a) to (j), both inclusive, of paragraph 19.

V

As to Effects

(Paragraph 20)

15. They deny the effects, as alleged in paragraph 20, resulting from the aforementioned alleged combinations

and conspiracies and from any and all alleged attempts to monopolize, and they deny that any act or acts done by any of them, or the effect of any act or acts done by any of them, impinges, impedes, affects, restrains, monopolizes or is an attempt to monopolize interstate trade or commerce, in the matter and in the things in the complaint alleged.

16. Wherefore, the defendants pray that the relief sought in the complaint be denied and that the complaint be dismissed.

(S.) Parker Fulton, (S.) Charles A. Baker and (S.) Burgess, Fulton & Fullmer, Of Counsel.

[fols. 17-21] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

Transcript of Proceedings Before Hon. Emerich B. Freed, Commencing on Wednesday, March 1, 1950, at 10 O'Clock A. M.—Filed January 23, 1951.

APPEARANCES:

On behalf of the Plaintiff: Victor H. Kramer, Esq.; Boddia Rashid, Esq.; Norman H. Seidler, Esq., and Victor Altman, Esq.

On behalf of the Defendants: Parker Fulton, Esq.; Charles A. Baker, Esq.

[fol. 22] COLLOQUY

Mr. Fulton: If your Honor please, if it is permissible at this point, I should like to have a separation of witnesses before opening statements are made.

The Court: All those persons who are expected to testify in this case will please go to the witness room until called by the Bailiff.

Mr. Fulton: That is, except the parties?

The Court: I beg your pardon?

Mr. Fulton: Except the parties?

The Court: Well, parties, of course, are permitted to stay, naturally.

Mr. Kramer: If the Court please, I would like to have this opportunity, if I might, to introduce to the Court my associates who will be with me during the trial of this case. This is Mr. Victor Altman of the New York Bar, Mr. Boddia Rashid of the District of Columbia Bar and Mr. Norman Seidler of the New York Bar.

Mr. Fulton: I just stated to counsel that certain docu-
[fol. 23] ments that they subpoenaed, I am informed now, are available. I had told them previously we would make them available.

Mr. Kramer: I understand, Mr. Fulton, that you will turn the documents over to us at the next recess or before?

Mr. Fulton: For examination.

Mr. Kramer: For examination only.

Mr. Fulton: That's right, with the understanding, of course, that we consider a lot of these documents highly confidential business documents. We don't expect they will go beyond just the purposes for which they are intended to be used in this trial, and the information remains with counsel and there only until the Court receives it, and then with the Court. Now, I don't want, for example, newspapers having access to any documents of that kind unless and until they are received in evidence.

The Court: Well, I don't assume that government counsel proposed to hand the documents over to others than their own associates and people interested in the trial of
[fol. 24] this case.

Mr. Fulton: No, your Honor, and I didn't so assume either, but I have seen strange things done by the gentlemen of the press, reporters.

The Court: You say that in spite of the fact you represent them?

Mr. Fulton: Quite so, sir.

Mr. Kramer: Shall I proceed, your Honor?

The Court: Yes.

Mr. Kramer: My local doctor informs me that the only cure for my voice difficulty is not to talk. I explained to him that was somewhat difficult under the circumstances, and he suggested that, although he didn't know very much about a lawsuit, that it was his understanding the witnesses were to do the talking, and I thought that was perhaps good advice and that I should follow that. I have no opening statement to make. I can't add very much to what we talked about when we were here last fall in connection with

the motion for preliminary injunction. I do want to say [fol. 25] two or three words about the character of the evidence that we propose to offer.

In a sense, our case may be divided into two parts, that portion which shows jurisdiction, that is to say, interstate commerce, and that portion which relates to the substantive offense charged, that is, the restraints and attempted monopolies.

It was my thought we would first introduce evidence relating to the jurisdictional issue. That evidence for the most part is documentary, and for that reason I undertook, because I thought it would be entirely proper, to hand to counsel for the defendants yesterday most of the documents that we at that time intended to offer on the issue of interstate commerce, it being my thought that this part of the case would hereby possibly be speeded up. I have here for your Honor in a rather inadequate binding the exact thing that I handed to Mr. Fulton, through Mr. Rashid, yesterday. I might also add, your Honor, that I am aware of your Honor's aversion to photostats. I have endeavored, [fol. 26] wherever possible to use positive photographs, excepting in one case where by instructions went awry, and I might also add that it is my hope your Honor may not have to read very many of those because most of them are contracts, most of them are exactly the same with the exception of the name of the party and the date being different. I think, if the Court please, that is all that is necessary for me to say at this time in opening.

The Court: May I say this in respect of these exhibits, that I do not propose to fall into the same difficulty that I have experienced in another antitrust case that I heard some time ago where, for the sake of expediting the case, I permitted counsel to introduce documents, without reading them, and the same suggestion was made that you made, that, "It will not be necessary for your Honor to read them." Nevertheless, counsel insisted on offering them, they were offered. The result was I spent exactly four [fol. 27] months in chambers reading exhibits. I did not conclude from that that that was in any way expediting the matter. It simply meant that what should have been done by counsel was done by the Court. So I would suggest that as these documents are offered, Mr. Kramer, it will be perfectly proper for you to ask one of your associates who is

not bothered with his voice to read those documents so that the Court will not be put into the position of after they are offered having to read them in chambers, and having no knowledge of their contents at the time they are offered.

Mr. Kramer: Very well, your Honor.

The Court: Mr. Fulton.

Mr. Fulton: If your Honor please, I do propose to make a very brief statement of our case. However, before I make that statement, there are certain matters I should like to present to your Honor preliminarily and, although I describe the matters as preliminary matters, I do not by that mean to detract from their importance at all. I consider [fol. 28] them extremely important.

I now, before my opening statement is made at all, on behalf of the individual defendants in this case, namely, Samuel A. Horvitz, Isadore Horvitz, D. P. Self and Frank Malloy, move your Honor to dismiss this entire case as to them because they as agents and officers of the corporate defendant were acting in their capacities as such agents in doing the acts charged and that, therefore, they cannot be charged with, and under the law, with having conspired with the corporate defendant either in restraint of trade or to monopolize.

Again, in view of our doctrine of principal and agent, even as to the charge of the attempt to monopolize, that they are improperly joined since their acts are the corporate acts, and since the corporate action is through them and them alone.

Secondly now, if your Honor please, in the alternative and only in the alternative, that the defendant The Lorain Journal Company, the corporate defendant, be dismissed for the same reasons.

[fol. 29] Third——

The Court: For the same reasons, they being what?

Mr. Fulton: The same reasons as submitted to your Honor.

The Court: That the corporation cannot be charged with conspiring?

Mr. Fulton: That's right, with these individual defendants for the acts set forth in this petition.

Third, that there be dismissed from consideration in this case what I shall describe for want of a better term two claims or two causes of action. I know we don't separate

causes of action any longer, but I think this complaint does set forth now, since it has been amended, three causes of action: number one is a conspiracy in restraint of interstate trade and commerce; number two is a conspiracy to monopolize interstate trade and commerce; and number three is an attempt to monopolize interstate trade and commerce.

I move that there be taken from this case for any consideration thereof the charges of conspiracy to monopolize [fol. 30] and conspiracy in restraint of trade, by reason of the fact that there cannot be a conspiracy between the corporate defendant on the one hand and the individuals named in this case on the other hand for the acts set forth in the petition, that there be left then only, presently, at least, for the consideration of this Court the question of whether the defendant—leaving the only issue to be that between the defendant Lorain Journal Company and United States of America as to whether or not the Lorain Journal Company itself as a corporate entity attempted to monopolize interstate trade and commerce in the manners and ways set forth in the complaint.

I should like to have those matters ruled on before making my opening statement, which will be very brief, I assure your Honor.

The Court: Aside from those mere assertions that you make, do you have anything to sustain your position?

Mr. Fulton: That is, as to the lack——

The Court: That the individual defendants cannot be charged with conspiring with the corporate defendant in [fol. 31] the things that are charged, aside from the ultimate question of conspiracy.

Mr. Fulton: If your Honor puts that question to me, and before answering it precisely, I would say that—and I am not going to answer it in the affirmative—if that question is answered in the affirmative it relates only to what I have described as the third cause of action, that is to say, the attempt to monopolize. It doesn't relate to the other two, namely, conspiracy in restraint of trade or a conspiracy to monopolize. But now I answer that question negatively for this reason, that I think that where you are thinking in terms of a conspiracy, which is a prerequisite to the charges in this complaint, respecting either the restraint of trade or the conspiracy to monopolize, if you are not thinking of

those two and you are thinking in terms of an attempt to monopolize, the attempt here, if your Honor please, is made by the corporate defendant. Of course, it's done with and through the individuals for the very reason that a corpora- [fol. 32] tion cannot act except through individuals. But they are done through those individuals acting as its agent or its agents. It is not an aiding and abetting, it is the performance, and the same performance as if done by a natural person who doesn't require agents to perform. A corporate, artificial entity does require the action of an individual to perform the act for it.

(Further discussion had.)

The Court: The Court can't prejudge what this evidence may produce as to whether or not they were at any time acting in their individual capacities in addition to acting as officers, aside from the question that you have raised, and although in the memorandum which I filed on the motion for preliminary injunction I raise that question, I did not answer the question either affirmatively or negatively.

Mr. Fulton: That's right.

The Court: I simply raised the question as one that is before the Court and should be considered by the Court.

Mr. Fulton: That's right, your Honor didn't answer it. [fol. 33] I raised it then, I raise it now, and I suppose if your Honor proceeds with the hearing of the evidence it will be an issue to be determined ultimately anyhow. I will say this, your Honor, that the question which your Honor propounds about whether on this so-called charge of an attempt to monopolize the individuals could aid or abet, I wouldn't with such ease answer that negatively if this were a criminal information or indictment. I would be a little more hesitant. This happens to be a civil action for injunction. But after your Honor has ruled on the preliminary motions, I shall then make a very brief statement of the case.

The Court: The motions will be overruled.

Mr. Fulton: I am going to follow pretty much in form what Mr. Kramer has done for two reasons: first, your Honor has a grasp of this case that opening statements are not required to portray; second, the time saving element is important. Though this will be slightly repetititious, permit me once more to say that these defendants, now I speak

[fol. 34] of all of them whom I represent here, are charged in this complaint with three things. One is a conspiracy in restraint of interstate trade. The second thing is a conspiracy to monopolize interstate trade and commerce. The third thing is that it and they—I will put it that way, the corporation and the individuals,—attempted to monopolize interstate commerce of that kind that is set up and described in this bill of complaint.

Now, it is said that the restraint and the monopolization by conspiracy or attempt is in the so-called newspaper field and the restraint has operated upon the newspaper and radio field; that it has operated particularly against, if I may portray it correctly, and the effect of the acts are against, a particular newspaper in Lorain, the Sunday News, and its radio station. I want to meet that first. That so far as this complaint is concerned, so far as the proof goes it will show or demonstrate on behalf of these defendants that neither that Sunday News in Lorain nor that radio [fol. 35] station are engaged in interstate commerce in any form.

I state they are not engaged in interstate commerce within the definition of the term interstate trade or the term interstate commerce of the Sherman Law. To the extent that it is essential by reason of the averments in this complaint, it is denied that the Lorain Journal is engaged in interstate commerce, or trade. We say that none of the acts which are alleged or sought to be portrayed by this complaint, and we feel with confidence that none of the evidence, competent evidence, that will be offered in support of that complaint, will show that any act of this defendant or any of its officers or agents joined with it in any wise impinge on or affect interstate commerce.

Now, the claim is made that these three things were sought to be done by various means and acts. That is, we sought to restrain trade through this conspiracy; we sought to monopolize trade through this alleged conspiracy; and we attempted to monopolize trade by certain things which [fol. 36] they say formed a part of the conspiracies in the two causes of action, and make up a component part of the attempts or the attempt to monopolize trade.

Now, your Honor, those things I am going to go over briefly and then I am through. I think the best outline of what those things are your Honor set forth in this memorandum when your Honor ruled on this motion for tempo-

rary injunction. In my reading of them all I shall do is to transpose them and for a reason which will become obvious as I do it.

Now, these things are: that these defendants made efforts to buy the Elyria Chronicle-Telegram and Elyria-Lorain Broadcasting Company. We deny that. We say the Government will never establish that. If it came to real proof, negatively, we could prove the negative of it.

That we made an agreement with the Lorain County Publishing Company, pursuant to which that company has restrained from circulating copies of the Elyria Chronicle-Telegram in Lorain, and hasn't solicited or accepted for [fol. 37] publication advertisements for the sale of goods or services in Lorain. We deny that. We assert the Government will fail to establish that at all by any competent proof.

Next—I read this, your Honor outlined it as proper subject matter coming from this complaint—we did this: we attempted to persuade employees of the Lorain Sunday News and the Elyria-Lorain Broadcasting Company to leave their employment. We deny that. But I cannot help but say, by way of passing, as a lawyer, a lawyer and as an officer of the court addressing your Honor, I don't know what place an averment like that has in a complaint of this kind.

Now, I come to the two things which your Honor analyzed as being two of these alleged acts that formed parts of the conspiracy and are the acts by and through which accomplishment was had last, and I do that because I think this case will resolve itself into a consideration of these points only finally.

Refusal, that is refusal by the company, to accept adver- [fol. 38] tising or renew or continue advertising for persons, firms or corporations who advertise over the facilities of the Elyria-Lorain Broadcasting Company. That is C as it is outlined in your Honor's list, and two as I will state it now in discussing these things. Attempting to persuade persons from advertising or exerting pressure upon them to prevent them from advertising. I will take that in two parts. Attempting to persuade persons from advertising or exerting pressure upon them to prevent them from advertising in the Lorain Sunday News.

I will say this to your Honor: that if by that averment the exercise of pressure is meant, coercion in the legal sense,

that certainly is denied. If by persuasion is simply meant that which arises from the inference of persuasion, that inference may be found in this case as it would be in a consideration of anybody engaged in a commercial pursuit where competition exists. One cannot ask his goods to be purchased when someone else makes similar goods without inferentially, indirectly, seeking to persuade his prospects [fol. 39] from buying his competitor's merchandise.

Refusal to accept advertising or renew or continue advertising for persons, firms or corporations who advertised over the facilities of the Elyria-Lorain Broadcasting Company.

We say this; that whatever acts were done by this defendant corporation through its officers in that respect had and cannot in law have any effect at all upon interstate trade or commerce. I know that the Government will offer evidence, it already submitted in affidavit form, certain data that was considered on the preliminary motion. To that we filed what we designated as counter affidavits, and in your Honor's analysis of those counter affidavits in relation to the Government's affidavits your Honor stated in effect that they were not denied and that for the purpose of consideration of the motion that was then before your Honor there wasn't any real controversion, so to speak, on the part of our affidavits in respect of or to the Government's affidavits; and I think that is going to be the situation when [fol. 40] this case is finished. The evidence, if the Court please, will show that no act done was done for the purpose of restraining trade, and by that I mean interstate trade or commerce, to monopolize, or in any attempt to monopolize.

The Court: You say it wasn't done for that purpose.

Mr. Fulton: It wasn't done for that purpose nor did it accomplish that purpose. The trade involved, if your Honor please, is not interstate trade. We have to meet this issue.

The Court: Does it have the effect of it?

Mr. Fulton: I deny it has the effect of it. I put that at issue in the answer and I stand upon that issue as placed by that answer.

We say that there will be no competent evidence upon which a court may say in law that any act done by the defendants in any fashion violated the Sherman Law. That there was nothing done which prevented any advertiser [fol. 41] from advertising either to or over the radio sta-

tions or in or through that Sunday newspaper. On the contrary, the evidence will reveal it put those advertisers in the position, it put the radio station and the newspaper in the position of dealing with each other, and gave to them, so far as the business of those people whose advertising was rejected by us, the sole use and monopoly of it.

There will be no evidence in this case, I am quite confident, that the Government will offer which will show, and I now go to those general words you always see in conspiracy charges "and with others", in fact the complaint here, reading like an indictment, says the defendant and these individuals, among themselves and with others. I say to your Honor that there will be no evidence here to show that there was any combination with others or any effort made with others. The Government cannot and will not show that we took contracts that required advertisers to use our facilities exclusively.

We stand now, if your Honor please, upon this answer, and we raise every issue in fact and in law pleaded in [fol. 42] the petition.

Mr. Kramer: Except those you have admitted in the answer.

Mr. Fulton: Well, there are a few things we have admitted.

The Court: You may proceed.

[fol. 43] Roy W. Ammel, a witness called by the plaintiff, being first duly sworn, testified as follows:

Direct examination of Roy W. Ammel.

By Mr. Kramer:

Q. What is your name, please?
A. Roy W. Ammel.
Q. Will you spell it, please?
A. A-m-m-e-l.
Q. What is your home address?
A. 12506 Edgewater Drive, Lakewood.
Q. Ohio?
A. Ohio.
Q. What is your business address?
A. Telephone Building, Elyria, Ohio.

Q. What is your occupation?

A. I am President and General Manager of The Elyria Telephone Company, and President of The Elyria-Lorain Broadcasting Company.

Q. How many stockholders are there in the Elyria-Lorain Broadcasting Company, if you know?

A. Fifty-eight.

Q. What proportion of the capital stock of the Elyria-Lorain Broadcasting Company do you and members of your family own directly or beneficially?

A. About ten per cent.

[fol. 44] Q. When did the Federal Communications Commission issue your company a license to broadcast?

A. May I refer to my notes?

Q. If you can't remember without the notes, you may refer to them.

A. (After referring to notes.) The AM license was granted on December 10, 1948, and interim license was issued on the FM facility on July 16, 1948.

Q. When did the company commence regular broadcasting operations on AM?

A. On October 17, 1948.

Q. And when on FM?

A. At the same time.

Q. On what frequency did you commence broadcasting?

A. 930 kilocycles on AM and 107.6 on FM.

Q. Has there been any change in those frequencies?

A. No, sir.

Q. Where are your studios located?

A. We have a studio in Lorain and Elyria.

Q. What are the call letters of the station you operate?

A. WEOL and WEOL-FM.

Q. Did your company submit for approval those call letters?

A. Yes, sir.

Q. Did they have any significance in your mind when you submitted them?

A. Yes.

Q. What was that significance?

[fol. 45] A. The W is required by the Federal Communications Commission. The EOL was Elyria and Oberlin and Lorain.

Q. In your application to the Federal Communications Commission for a permit to construct a broadcasting station, what area did you propose to serve by your operation?

Mr. Fulton: I object, if your Honor please.

The Court: What is the objection?

Mr. Fulton: I object to the question, which is, what area was proposed to be served. I think it is not a question of what area he proposed to serve, but what area the stations do serve.

The Court: I assume the Communications Division outlines and designates the area to be served by a radio station. Am I correct about that?

Mr. Kramer: That is correct, your Honor.

The Court: He may answer.

(No answer.)

Q. I hand you Government's Exhibit 1 for identification, which is a certified copy of the Division of the Federal Communications Commission in the application of the Elyria-Lorain Broadcasting Company for a construction permit, Docket No. 7780, and ask you to find the finding of fact No. 37 in that document, which appears, I believe, on page 13. I will ask you if that refreshes your recollection as to the towns which you proposed to render broadcasting service to if your license was granted?

[fol. 46] A. Yes, sir, it does.

Q. And what were those communities?

A. Lorain, Elyria, Wellington, Oberlin.

Mr. Fulton: May we have the others?

Mr. Kramer: If the Court please, I would like to call your Honor's attention to Conclusion 6 in this document, which appears on the last page of the document, on page 16.

The Court: I have it.

Mr. Kramer: Does your Honor wish us to read that to you? That is the basis upon which I am going to offer this document in evidence.

The Court: Well, let me look at it first. All right.

Mr. Kramer: If the Court please, as your Honor suggested, the questions I asked before were background to get to the point, which is Paragraph 6, showing the area which the Commission concluded would be served. I offer Exhibit 1 in evidence.

The Court: It may be received. I take it it is being

offered just for the purpose of Paragraph 37, on page 13, or Finding 37, as you refer to it, and 6 on page 16?

Mr. Kramer: Correct, your Honor.

Q. Have you ever heard broadcasts of WEOL while you were outside of Ohio?

[fol. 47] A. Yes.

Q. Do you remember how it was you happened to be outside of Ohio?

A. Yes; my brother-in-law was taken quite ill, and his residence was in Detroit, and I left Elyria around 3:00 o'clock in the afternoon, and listened to our station on the automobile, the car radio, all the way to Detroit.

Q. Do you remember when this occurred, approximately?

A. It was the early part of last year.

Q. The early part of 1949?

A. 1949, yes, sir.

Q. And you traveled from Elyria, you say, to Detroit?

A. Elyria, to Detroit.

Q. And in what state did you hear the broadcast in your car radio other than Ohio?

A. Michigan.

Q. Were you listening to AM or FM?

A. AM.

Q. What kind of radio set was it, do you remember?

A. It is the radio manufactured, I believe, by General Motors. It is the Delmo-Remy, I believe is the name of the manufacturer.

Q. Do you remember whether it was during the daytime or nighttime?

A. Both times. I listened to the station going to Detroit, [fol. 48] and I picked it up again after my departure from Detroit, and carried it until the station went off the air at 12:00 o'clock.

Q. And at all times while you were in Michigan, between the point where you crossed the Michigan line and your destination, was the reception good, or was it only good some of the time?

A. Passing through Toledo on my way to Detroit, the reception was not good for the period of probably a half mile, three-fourths of a mile.

Q. Was the reception good in all places in Michigan? Toledo is in Ohio.

A. Yes, I would say the reception was good—fair.

Q. Fair? You were able to understand what was said?
A. Yes.
Q. Mr. Ammel, I hand you Government's Exhibit 2 for identification and ask you to tell me what it is, if you know.
A. This is a list of sports events broadcast from WEOL originating outside of the State of Ohio.
Q. Was that document prepared in your office under your supervision and at your direction?
A. Yes, sir, it was.

Mr. Kramer: I offer Government's Exhibit 2 in evidence, if the Court please.
[fol. 49] Mr. Fulton: I object, if your Honor please.
The Court: What is the objection?
Mr. Fulton: The objection is this: this complaint is based upon our refusal, among other things, in the advertising end of it, to accept or continue or renew advertising. We are not dealing with what this station does generally about receiving, I will call it, advertisements, if you please, of baseball games. I don't know how it bears on this case.
The Court: I take it it is offered for the purpose of establishing interstate commerce, being engaged in interstate commerce, and the proof is now offered to show that station WEOL is engaged in interstate commerce. I take it that is the purpose of that proof.
Mr. Fulton: In other words, it is limited to show the station is engaged generally in interstate commerce?
The Court: I so understand. My understanding of the purpose of the proof is to establish interstate commerce, now; nothing else has been contended for. All the Exhibit shows is the fact that certain sporting events are broadcast over Station WEOL which originated outside of the State of Ohio.
Mr. Kramer: That is correct, your Honor.
[fol. 50] The Court: If objection is made on the basis that it is a listing made by someone else, that would be another question.
Mr. Fulton: That is, on the basis of hearsay?
The Court: Yes.
Mr. Fulton: Well, I thought about that and discussed it in our office, and we decided we wouldn't make any objection on a ground like that.
The Court: If it is based on the other objection, it will be overruled.

Mr. Fulton: Exception.

Q. What is generally meant by the term "National Advertiser"?

The Court: Let me stop for a moment to look at these. As I said, I don't want to be in the position of having any of these exhibits just offered without having full opportunity to examine them thoroughly.

Mr. Kramer: Would you like us to read Exhibit 2?

The Court: I think it might be well if you will have one of your associates do that. I will appreciate that very much. Or interrupt your examination long enough for me to read it.

Mr. Kramer: It is a pure oversight. I think this exhibit ought to be read.

[fol. 51] (Said Government's Exhibit 2 thereupon read to the Court.)

Q. Mr. Ammel, what is generally meant by the term "National Advertiser"?

A. An advertiser that is advertising products on a national basis over the whole United States.

Q. Mr. Ammel, I hand you Government's Exhibits for identification 3 to 13 inclusive, and I will ask you to tell me generally what those documents are.

A. These are contracts between advertising agencies and radio station WEOL.

Q. Is each of those contracts now in effect? Look at them, please, carefully.

A. (After examining same) With the exception of two, they are in effect.

Q. Read the numbers of the two that are not in effect.

A. No. 4 and No. 8.

Q. Are not now in effect?

A. No, sir.

Q. And when did Nos. 4 and 8 expire?

A. No. 4 expired December 12, 1949, and I believe No. 8 about the same time. I am not sure.

Q. You have no contracts similar to those two now in effect; is that correct?

A. That is correct.

Q. The numbers that are not now in effect are 4 and 8; [fol. 52] is that correct?

A. Yes.

Q. In each case of these series of contracts 3 to 13, omitting 4 and 8, does the contract say the name of the advertising agency and the name of the advertiser in whose behalf the agency is acting?

A. Yes, sir.

Q. In each case please look through these contracts and tell us with respect to each one, naming the number of the exhibit, whether or not the agency and the advertiser are within or without the State of Ohio.

A. Exhibit 3, both the agency and the advertiser outside the State.

Exhibit 5, both the advertising agency and the advertiser are without the state.

Exhibit 6, both the advertising agency and the advertiser are without the state.

Exhibit 7, both the advertising agency and the advertiser are without the state.

Exhibit 9, both the advertising agency and the advertiser are without the state.

Exhibit 10, both the advertising agency and the advertiser are without the state.

Exhibit 11, both the advertising agency and the advertiser are without the state.

[fol. 53] Exhibit 12, both the advertising agency and the advertiser are without the state.

Exhibit 13, both the advertising agency and the advertiser are without the state.

Q. Now, in the course of carrying out your obligations under these contracts in effect, I take it that you broadcast material; is that correct?

A. Yes, sir.

Q. How did the material which you broadcast pursuant to these contracts reach you,—by mail?

A. By mail, yes, sir.

Q. And where does it come from, the advertiser or the advertising agent?

A. The advertiser's agent.

Q. In each case?

A. In each case.

Q. You are paid for carrying out these contracts?

A. Yes, sir.

Q. How are you paid for carrying them out?

A. By check.

Q. How does the check reach you?
A. United States Mail.

Mr. Kramer: If the Court please, I offer Government's Exhibits 3 through 13, with the exception of Exhibits 4 and [fol. 54] 8, in evidence. In other words, 3, 5, 6, 7, 9, 10, 11, 12 and 13.

The Court: You are eliminating Exhibits 4 and 8?

Mr. Kramer: Yes. I am reserving the right at some other time to offer them. I don't know if I ever will.

The Court: They may be received.

Q. Does the Elyria-Lorain Broadcasting Company have contracts for advertising with merchants who are located in Lorain County, Ohio?

A. Yes, sir.

Mr. Kramer: I might say to your Honor that the purpose of the rather tedious examination on the national contract, at least I thought it was tedious, was to obviate the necessity of reading each of them. Is that all right?

The Court: Perfectly.

Mr. Kramer: I think I will obviate the necessity of having to read them.

Q. In the case of these contracts which you have, which I will hand you as soon as I get them marked, for advertisements for merchants in Lorain County, do you know, or could you state by looking at the contracts whether the advertiser's copy pursuant to these contracts is sent to you from the merchant or from someone else?

[fol. 55] A. I would have to refer to the contract.

Q. But you could tell if we showed them to you?

A. I believe I could.

Mr. Kramer: While the clerk is marking these documents, I was wondering if counsel or your Honor would have any objection if hereafter we mark and not offer, these documents while the court is in recess.

The Court: That would be a great advantage.

Mr. Kramer: I hesitated to do it on the first day.

The Court: That would be perfectly proper.

Mr. Fulton: That is the practice your Honor used always when he was District Attorney.

Q. I hand you for identification Government's Exhibit 14 through 45, inclusive, and I will ask you to tell me whether

or not each of those is a contract between the Elyria-Lorain Broadcasting Company and some advertiser providing for the advertising of the advertiser's product or service over radio station WEOL?

A. (After examining said exhibits) Yes, sir.

Q. Can you tell us with respect to each of those contracts whether or not you are paid for carrying them out by someone located in Ohio or by someone located outside of Ohio?

[fol. 56] A. The majority of these are cooperative advertisers.

The Court: Are what?

The Witness: Cooperative advertisers.

Mr. Kramer: You must not let your voice fall at the end or we can't hear.

Q. What do you mean by the phrase "cooperative advertising contracts"?

A. Where the manufacturer pays up to fifty per cent of the advertising cost, in cooperation with the local dealer.

Q. Does the payment come direct to you from the manufacturer, or does it come from the local dealer?

A. It comes from the local dealer.

Q. In case of any of those contracts is the script material which you broadcast from outside of the State of Ohio?

A. Yes.

Q. Will you please go through each one as rapidly as you can and call off from each one where the script material is sent to you from outside of the State of Ohio?

A. (Witness examines exhibits).

Q. Here we have Government's Exhibit 7, a contract for radio advertisement with the Joseph Advertising Agency on behalf of Red Top Brewing Company. Does that script come to you from Cincinnati or from outside of the State of Ohio?

A. It comes from Cincinnati.

Q. Government's Exhibit 18, Gerst Advertising Agency, [fol. 57] advertising the Ice Follies, 1950. Do you remember whether the advertising copy was sent to you from within or from without Ohio?

A. That was from without the State.

Q. Does it come to you by mail?

A. Yes, sir.

Q. In the form of a record or typewritten material?

A. Electric transcription.

Q. Government's Exhibit 9, contract with the Ace Distributing Company, The Rieselbach Agency supplying copy.
A. That is supplied from Milwaukee.
Q. Wisconsin?
A. Yes.
Q. To you?
A. Yes.
Q. By "you" I mean the Broadcasting Company?
A. Yes, sir.
Q. Government's Exhibit 20, contract with Richard T. Brandt, advertising agency for the Allied Oil Company. Does that copy come to you from within or without the State of Ohio?
A. Within.
Q. Government's Exhibit 21, contract with Gregory & House Advertising Agency on behalf of Spang Baking Company. Is that from within or without the state?
A. Without.
[fol. 58] Q. Benton & Super Electric Company. Do you remember whether the copy pursuant to that contract, Government's Exhibit 22, comes to you from within or without the State of Ohio?
A. Without the state.
Q. From where, please, if you know?

Mr. Fulton: Does the witness have some different paper in his hand?

Q. What do you have in your hand?
A. I am referring to the list of in and out of the state copy.

(Paper shown to Mr. Fulton).

Mr. Fulton: That is a list you made up from your records; is that it?
The Witness: Yes.

A. The Benton & Super Company handle the radio and television repairs. Unfortunately I don't know the exact location. I know the copy comes from outside of the state.
Q. But you don't know where?
A. No.
Q. That is all right. You can only testify to what you know. Here is Government's Exhibit 23, contract between WEOL and Avon Hardware & Equipment Company. Do

you know where the copy pursuant to that contract comes from?

[fol. 59] A. It comes from outside.

Q. Do you know from where it comes?

A. No, I can't answer.

Q. Do you know the product advertised by the Avon Hardware?

A. Yes, sir; electrical equipment, television and radio receivers.

Q. Government's Exhibit 24, with Thomas R. Polen, Elyria Fence & Implement Company?

A. That comes from out of the state.

Q. Sent to you in transcription form?

A. No; comes in the United States mail.

Q. Typewritten copy?

A. Typewritten copy.

Q. Government's Exhibit 25, C. W. Barres. Do you know where that copy comes from pursuant to that contract?

A. That is within the state.

Mr. Fulton: If your Honor please, I am just wondering if there will be a little saving of time and expediting of time if we couldn't just say that the examination of that number of this group, 14 to 45, is illustrative of the way in which they do business, instead of going through each of the exhibits one after the other. I don't want to tell you how to do, but I assume it will be the same kind of testimony, some [fol. 60] without and some within.

The Court: I take it that some objection is being made to the interstate character of the business, based upon possibly the amount of interstate business done, and the Government should have the right to prove it all. If there is no objection made, of course it may go in expeditiously.

Mr. Fulton: There is that objection made.

The Court: Do you agree that out of some thirty exhibits here, contracts for advertising, 18 or 20 or 25 are those where the copy came from outside of the State of Ohio? If you can agree on something of that character, I imagine it would probably save some time.

I think we will take a fifteen minute recess at this time.

(Recess taken).

[fol. 61] Q. Mr. Ammel, with respect to Government's Exhibit 26, contract between WEOL and G. E. Conkey Com-

pany, where, if you know, did the advertising script and materials for that contract originate from?

A. It comes from without the state.

Q. Do you know where it comes from?

A. May I ask who the advertiser was, Mr. Kramer?

Q. G. E. Conkey Company. Do you want to see the contract (handing contract to witness)?

A. I don't know.

Q. Government's Exhibit 27, contract between Erb Radio & Television and WEOL, do you know where the advertising materials for that contract originate from?

A. That's within the state.

Q. Government's Exhibit 28, Goodyear Service-WEOL contract, do you know where the materials come from for that?

A. That is within the state.

Q. When you say "within the state" you mean within the state of Ohio?

A. Within the state of Ohio.

Q. Government's Exhibit 29, the S. S. Kresge Company advertises merchandise, Wednesday morning specials and such. Do you know where the copy for that comes from, do you?

A. It comes from Detroit.

[fol. 62] Q. Is it in the form of a letter or is it a transcription?

A. We are using both, transcript and letter.

Q. Lorain Glass Company, Government's Exhibit 30, where do the materials for that contract originate?

A. That is within the state of Ohio.

Q. Government's Exhibit 31, contract between WEOL and Kamms Record Shop, do you know where the materials for that contract originate?

A. Part of it is from without the state.

Q. And part from within the state?

A. Part from within the state, yes, sir.

Q. Exhibit No. 32, Parsch Lumber & Coal Company, 15 minute broadcast, neighborhood reporter, do you know where that copy comes from?

A. That is within the state of Ohio.

Q. Exhibit 33, Gregory & House, Cleveland, Ohio, acting as agents on behalf of the Pilsner Brewing Company, do you know where that—you might take a look at that Exhibit

33 and tell us what that was all about (handing exhibit to witness).

A. This covers the hockey games and the transcripts prepared outside of the state of Ohio.

Q. Are there transcriptions?

A. Yes, sir, there are, and also live copy that is prepared by the advertiser.

[fol. 63] Q. With respect to that Exhibit 33, did WEOL broadcast hockey games?

A. Yes, sir.

Q. And was that broadcast sponsored by the Pilsner Brewing Company, as originating on WEOL?

A. It was.

Q. And did it cause you to make announcements at regular intervals during the broadcast by you of hockey games?

A. Yes, sir.

Q. And were those announcements transcribed or were they read by an announcer?

A. Well, some were transcribed and some were read.

Q. In the case of transcriptions, where were they sent to you from, if you know?

A. I don't know.

Q. Government's Exhibit 34, Resar's Rentals, do you know where the advertising copy pursuant to that contract originated?

A. Within the state of Ohio.

Q. Exhibit No. 35, Ryan Appliance Company, do you know where the advertising copy for that contract originated from?

A. That was within the state of Ohio.

Q. Sewing Machine Sales & Service, Exhibit 36, do you know where the advertising copy for that contract originated from?

[fol. 64] A. Within the state of Ohio.

Q. Government's Exhibit 37, Spencer Elevator, Inc., do you know where the copy for that contract originated, the advertising copy?

A. That's outside the state of Ohio.

Q. Do you know where it came from?

A. Detroit.

Q. Which is in the state of——

A. Michigan.

Q. Government's Exhibit No. 38, a contract between

WEOL and Miles J. Watson Hardware, do you know where the copy pursuant to that contract came from?

A. No, I don't.

Q. I would like you to look at Government's Exhibit 38, Mr. Ammel, and you will notice under the words "program material arrangements" it says: "This contract will be cancelled if coop. advertising cannot be obtained by Watson's Hardware." Do you know in whose handwriting that statement appears?

A. No, sir, I don't.

Q. What do you understand that language to mean?

Mr. Fulton: Objection, if your Honor please.

The Court: Sustained.

Q. With respect to Government's Exhibit 39, contract [fol. 65] between WEOL and Charles A. Persons, do you know where the copy of the transcription called for by that contract originated?

A. From the advertising agency in Chicago, Illinois.

Q. And was it sent direct to the station?

A. Yes, sir.

Q. And do you know if it was in the form of a transcription or not?

A. It was a transcription.

Q. Berson's Department Store, Exhibit No. 40, do you know where the copy came from pursuant to that contract?

A. That was within the state of Ohio.

Q. Government's Exhibit 41, Berrington's, where did the copy pursuant to that contract come from?

A. Within the state of Ohio.

Q. Government's Exhibit 42, Elyria Radio—by the way, is the Elyria Radio different from the Elyria-Lorain Broadcasting Company?

A. Yes, sir.

Q. Elyria Radio is what?

A. A retail store.

Q. Where did the copy pursuant to that contract come from, if you know?

A. I don't know.

[fol. 66] Q. Government's Exhibit 43, a contract between WEOL and Law Electric Company, where did that—I will hand this to you, sir, this Government's Exhibit 43, and you will note in the line under "Program Material Arrange-

ments''—does that refresh your recollection as to where the copy for that advertising contract came from?

A. Within the state of Ohio.

Q. Government's Exhibit 44, a contract between O'Donnell Paint & Wallpaper Company and radio station WEOL, do you know where the advertising material pursuant to that contract came from?

A. Within the state of Ohio.

Q. John Mack, Government's Exhibit 45, do you know where the advertising copy pursuant to that contract came from, and does that refresh your recollection on that score (handing exhibit to witness)?

A. Within the state of Ohio.

Q. Government's Exhibit 46—I find that I omitted some, if the Court please. Government's Exhibit 16, a contract between Canada Dry Bottling Company and the Elyria-Lorain Broadcasting Company, do you know where the script for material originated from pursuant to that contract?

A. No, sir.

Q. Take a look at it and see if it refreshes your recol-
[fol. 67] lection.

Mr. Fulton: May I ask the witness one question here?

Mr. Kramer: Yes.

Mr. Fulton: You looked at something, or referred to something when you said no. Now, would you let me see that, please, where that place is?

The Witness: It doesn't appear on there, Mr. Fulton.

Mr. Kramer: Answer out loud.

Mr. Fulton: Where the blank space appears under the heading ''Notes''?

The Witness: No, Canada Dry does not appear as out-of-state copy.

A. This is outside the state of Ohio.

Q. Do you know where?

A. No, sir.

Q. What is the basis for your statement, then, that it was prepared outside of the state of Ohio?

A. Electrical transcription.

Q. That is, it is your understanding that electrical transcriptions that you broadcast are not prepared any place in the state of Ohio?

[fol. 68] A. Not to my knowledge.

Q. As far as you know, all your broadcast material on electrical transcriptions are made outside the state of Ohio, is that your point?

A. Yes, sir.

Q. Government's Exhibit 15, George Hermann, do you know where the material pursuant to that contract originated?

A. Outside of the state of Ohio.

Q. Do you know where?

A. No, I can't tell you. It's a General Electric product that is being advertised.

Q. Maytag Sales & Service, Government's Exhibit 14, do you know where the material, the advertising material called for pursuant to that contract, was prepared, where it originated?

A. No, sir.

Q. Now, Mr. Ammel, you recall I showed you this batch of contracts, being, I believe, Government's Exhibits 14 through 45, some time ago before the recess and I asked you a question in response to which I think you said these were all cooperative advertising contracts. Am I right or wrong?

A. No, I said that some of them were cooperative.

Q. Some of them were and some of them were not?

[fol. 69] A. That is correct.

Q. With respect to those that are cooperative advertising contracts, do I understand that you are paid in each case by the local merchant, or is the payment made direct to you from someone outside the state of Ohio, if you know?

A. To my knowledge, they are all paid for by the local advertiser.

Mr. Kramer: I offer Government's Exhibits 14 through 45 in evidence.

The Court: They may be received.

Q. Does the Elyria-Lorain Broadcasting Company have any contracts with so-called news associations or press associations?

A. Yes, sir.

Q. I hand you Government's Exhibit 46 for identification and ask you to tell me what it is?

A. This is a contract entered into on the 18th day of March, 1948, between the United Press Association and the Elyria-Lorain Broadcasting Company.

Q. Is the contract still in effect?
A. It is.

Mr. Kramer: I offer Government's Exhibit 46 in evidence.
The Court: It may be received.

[fol. 70] Q. Pursuant to this contract, Mr. Ammel how does news reach you in Elyria?
A. By teletypewriter.
Q. Is the coverage of news that you receive on that teletypewriter world wide?
A. Yes, sir.

Mr. Kramer: Does the Court wish that I have this contract read?
The Court: No.

Q. I hand you Government's Exhibit for identification 47 and 48, Mr. Ammel, and ask you to state in each case separately what they are, if you know?
A. Exhibit 47 is a contract dated September 28, 1948, between Capitol Records, Inc., Hollywood, California, and the Elyria-Lorain Broadcasting Company. Exhibit 48 is a contract dated April 14, 1948, between Lang-Worth Recorded Music Service and Elyria-Lorain Broadcasting Company.
Q. Are these contracts still in effect?
A. Yes, sir.
Q. Pursuant to these contracts are electrical transcriptions sent to you?
A. Yes, sir.
Q. In each case, if you know, where did the transcriptions [fol. 71] come from?
A. The Lang-Worth transcriptions come from New York and Capitol from California.
Q. How are these delicate disks sent, by Express or by mail?
A. Well, some come by Express and some Parcel Post and some by mail.
Q. By mail, do you mean any distinction between mail and Parcel Post?
A. Well, it depends upon the size.
Q. You mean First Class Mail?
A. The size of the shipment, First Class Mail, yes.
Q. Do you have any idea of the number of electrical tran-

scriptions which you receive pursuant to these contracts each year?

A. The Lang-Worth library, I believe, consists of about 3500 recordings.

Q. You are referring now to Exhibit 48, The Lang-Worth Recorded Music Service?

A. Yes, sir.

Q. They send you a library of records, is that it?

A. Yes, sir.

Q. Is that library constant, or is it continuously being added to?

A. It's continually being added to.

[fol. 72] Q. When you say continually, every day, every week, every month?

A. Well, we receive shipments bi-weekly.

Q. I notice Government's Exhibit 48, which you have in your hand, I believe, has at the top *if* it the words "Lease Agreement". Do these records that are sent pursuant to that contract belong to you?

A. No, sir.

Q. Or to Lang-Worth?

A. They belong to Lang-Worth.

Q. Do you return them to Lang-Worth?

A. At the expiration of our contract.

Q. You keep them throughout the term of the contract?

A. Yes, sir.

Q. Now, I show you Government's Exhibit 47, which is Capital Records, Inc. Do the statements you made pursuant to my questions regarding Government's Exhibit 48—are your answers substantially the same if I were to ask the same questions regarding Government's Exhibit 47, or is there a difference in the general character of the two contracts?

A. No, there isn't any difference.

Q. For this service under Government's Exhibit 47 how much do you pay?

A. May I refer to my notes on that?

Q. Can you remember without referring to your notes?

[fol. 73] A. Not too well, no.

Q. All right.

A. Lang-Worth feature programs on the basis of $1400 annually, Capital Recordings are $1200 annually.

Mr. Kramer: I offer Government's Exhibits 47 and 48 in evidence.

The Court: They may be received.

Q. Mr. Ammel, I show you Government's Exhibit 49 and ask you to tell me what it is?

A. This is a list of public sponsors and transcribed programs.

Q. Who prepared it?

A. It was prepared under my direction.

Q. And supervision?

A. Yes, sir.

Q. You say it is a list of public sponsors and transcribed programs?

A. Yes, sir.

Q. Broadcast by whom, if anybody?

A. WEOL.

Q. It says at the top "The following transcriptions are sent to us through U. S. Mail." Who is "us"?

A. WEOL.

Q. Do I understand these are advertising programs or nonadvertising programs?

[fol. 74] A. They are public service programs, not advertising programs.

Q. I should have said advertiser sponsored or not. They are not advertiser sponsored, is that correct?

A. No, sir.

Q. During what period were these programs broadcast by you, period of time, I mean? Is that a list of all that you have done since you have been in operation, from October, 1948 to date, as far as you know?

A. Yes, it is.

Q. And in each case, as I understand it, as indicated on Government's Exhibit 49, electrical transcriptions were sent to you through the mail, as indicated, or by Express, as indicated?

A. Yes, sir.

Q. On receipt of those transcriptions you played these records over the air?

A. Yes, sir.

Q. And that document, Government's Exhibit 49, indicates from what geographic point each of these transcriptions originated or commenced, I should say, its journey to you?

A. Yes, sir.

Mr. Kramer: I offer Government's Exhibit 49 in evidence.

The Court: It may be received.

[fol. 75] Q. Mr. Ammel, I show you Government's Exhibits 50 and 51 and ask you to tell me what those two documents are, if you know?

A. Exhibit 50 is a contract dated October 8, 1948, between Broadcast Music, Inc. and Elyria-Lorain Broadcasting Company.

Q. Is the contract still in effect?

A. Yes, sir.

Q. And how about the next one—Exhibit 51, is it?

A. Exhibit 51 was a contract dated October 8, 1948, between SESAC Broadcast and the Elyria-Lorain Broadcasting Company.

Q. Will you please describe to the Court in general terms what is provided for by Government's Exhibits 50 and 51?

A. Exhibit 50, I believe, is Broadcast Music, Inc.

Q. That's right.

A. That is an arrangement between the publishers—rather, the authors of different music, musical pieces, that the Broadcast Music, Inc. control either directly or indirectly, and the broadcasting industry is required to pay a license fee for the privilege of broadcasting the recordings or electrical transcriptions.

Q. You say you are required to pay. To whom do you pay?

A. To Broadcast Music, Inc.

Q. And you are—in the case of Government's Exhibit 51 you pay SESAC, Inc., is that correct?

[fol. 76] A. Yes, sir.

Q. How do you pay, by cash, check, money order?

A. Pay them by check.

Q. And to whom do you send the check in the case of Government's Exhibit 50?

A. To Broadcast Music, Inc., New York City.

Q. And in the case of Government's Exhibit 51 to whom do you send your payment?

A. To SESAC in New York City.

Q. And in exchange for those payments B. M. I. and SESAC, respectively, permit you to broadcast over WEOL

and WEOLD-FM selections of music as to which they control the copy right, is that a fair statement?

A. That is right.

Q. Do you know what you paid B. M. I. during 1949 for that license?

A. Approximately $1500.

Q. Do you know what you paid SESAC for your license with it during 1949?

A. Approximately $360.

Q. Approximately or exactly?

A. That's approximate.

Mr. Kramer: I offer Government's Exhibits 50 and 51 in evidence, if the Court please.

[fol. 77] The Court: They may be received.

Q. I want to call your attention again to Government's Exhibit 49. My alert associate, Mr. Altman points out that the address on some of the places of origin of public sponsors are not indicated. Is that because you don't know the address?

A. Yes, sir.

Q. You don't know where they are?

A. I don't know.

The Court: Well, you are referring to two of them.

Mr. Kramer: Government's Exhibit 49, sir.

The Court: But there are only two that I can see on there, are there not?

Mr. Kramer: That's right, your Honor.

Q. I now hand you, and these, I hope, if the Court please, will be the last exhibits I shall have to hand this witness—Government's Exhibits 52, 53, 54 and 55, and ask you to tell me generally what they are, if you know.

A. Exhibit 52 is a contract dated October 17, 1948, between the American Society of Composers, Authors and Publishers and the Elyria-Lorain Broadcasting Company. Exhibit 53 is a contract dated October 17, 1948, between the American Society of Composers, Authors and Publishers and the Elyria-Lorain Broadcasting Company. Ex-

[fol. 78] hibit 54 is a contract dated October 17, 1948, between The American Society of Composers, Authors and Publishers and the Elyria-Lorain Broadcasting Company, Station WEOL. Exhibit 55 is a contract dated October

17, 1948, between the American Society of Composers, Authors and Publishers and the Elyria-Lorain Broadcasting Company, Radio Station WEOL-FM.

Q. Is each of those contracts still in effect, to the best of your knowledge?

A. Yes, sir.

Q. Am I correct that Government's Exhibit 53 is a local station blanket commercial license?

A. Yes, sir.

Q. Am I correct in saying that Government's Exhibit 52 is a local station blanket sustaining license?

A. Yes, sir.

Q. Am I correct in saying that Government's Exhibit 55 is also a local station blanket sustaining license?

A. Yes, sir.

Q. And that the difference between the last two, 55 and 52, is that 55 is FM which, I believe, they say is Frequency Modulation, and 52 is for Amplitude Modulation?

A. Yes, sir.

Q. Am I correct in saying that Government's Exhibit 54 is a local station blanket commercial license, FM?

[fol. 79] A. Yes, sir.

Q. Are these contracts similar in a general nature to those which you have with B. M. I., Government's Exhibit 50?

A. Yes, sir.

Q. Do you know how much royalties you paid during 1949, approximately, pursuant to those four contracts with ASCAP?

A. $3500.

Q. And to whom did you make the payment?

A. To ASCAP in New York City.

Q. By check?

A. By check, yes, sir.

Q. How did the check get there?

A. Through the United States Mail.

Mr. Kramer: I offer Government's Exhibits 52 to 55 in evidence, your Honor.

The Court: 54—was there a 55?

Mr. Kramer: 52, 53, 54 and 55.

The Court: They may be received.

Q. Can you give us an estimate of the percentage of your daily broadcast time covered by these news broadcasts which you receive from the United Press?

A. Between 10 and 12 per cent.

Q. Can you give us an estimate of the percentage of the [fol. 80] daily broadcast time covered by broadcasts of musical selections on which a royalty or other fee is paid by you to B.M. I., SESAC or ASCAP, collectively?

A. About 65 per cent.

Q. Are all or most of the transcriptions received by you from Capital Records, Inc. and Lang-Worth Recording Music Service, copyrighted either by ASCAP, B. M. I. or SESAC?

A. Yes, sir.

Q. All of them, or most of them?

A. All of them, to my knowledge.

Q. Can you tell us, if you know, what portion of your broadcast time is taken up by broadcasting transcriptions received from Capital and Lang-Worth? If you can't give it to us, don't guess.

A. The musical portion of our daily broadcasts, I would say 45 to 50 per cent Lang-Worth and 25 to 30 per cent Capital.

Q. And the rest might be what, live music?

A. Live programs and other recordings.

Q. Were substantially all of the gross income of WEOL in the calendar year 1949 derived from advertising?

A. Yes, sir.

Q. Approximately how much was the gross income of the Elyria-Lorain Broadcasting Company in 1949?

A. Approximately $175,000.

[fol. 81] Q. That's your total gross income in 1949?

The Court: How much?

The Witness: $175,000.

Q. And what was your net income in 1949, approximately?

A. Approximately 26 or 27-hundred dollars.

Q. Are you able to give us a reasonably accurate estimate of the proportion of the $175,000 gross income that you had in 1949 that is derived from national advertising? And by national advertising I mean the type referred to by Government's Exhibits 2 to 13, I believe.

A. Yes, sir. 15.98 per cent.

Q. Was that national advertising?
A. Was that national advertising.
Q. In 1949?
A. In 1949.
Q. Please tell the Court what is meant by the phrase in the radio trade "per inquiry offer".

Mr. Fulton: What was that?
Mr. Kramer: "Per inquiry offer".
Mr. Fulton: I object to that, if your Honor please.
The Court: Why?
Mr. Fulton: I think the language speaks for itself. I don't know whether this gentleman is the proper one to [fol. 82] interpret it or not.
Mr. Kramer: I withdraw the question, your Honor.
The Court: All right.

Q. Has WEOL ever sponsored any "per inquiry offers"?
A. Yes, sir.

The Court: What is that? Apparently everybody knows what it means but the Court.
Mr. Fulton: My point is, your Honor, that this witness is not the proper person to interpret it for us.
The Court: You may develop as to what his experience has been in the radio industry, determine whether or not he is qualified to answer the question. I would like to know what it means.
Mr. Kramer: Do you want me to qualify him?
The Court: Yes, let's find out what he does and how much of his time he devotes to it.

Q. How much of your time do you devote to radio station WEOL, approximately?
A. Around three or four hours a day.
[fol. 83] Q. Was your connection with radio station WEOL your first entrance into the radio business?
A. Yes, sir.
Q. During those approximate two years that you have been in the radio business, have you had occasion to have contact with people who specialize in radio advertising?
A. Yes, sir.

Mr. Fulton: Go ahead, let him answer.

Q. What is "per inquiry offer"?

Mr. Fulton: I don't know yet what you said.
Mr. Kramer: "Per inquiry——
Mr. Fulton: Per inquiry what?
Mr. Kramer: Offer.
Mr. Fulton: Where does it appear?
Mr. Kramer: It doesn't appear anywhere, I am asking.
Mr. Fulton: In any of these exhibits?

Q. Do you know if it appears in any of these exhibits, Mr. Ammel?

A. Not to my knowledge. It might in one or two contracts.

Mr. Fulton: I don't know what the point of this is.
Mr. Kramer: Now, if the Court please, I would like to [fol. 84] have the privilege of answering the question that was just put to me, because I think it will clear the whole thing up. I am endeavoring to ask a question which will support in part Paragraph 16 of the Government's complaint, which paragraph I would like to read to the Court, if I may, and I would also like to read the answer of the defendants on that point.

(Reading from pleadings.)

Q. Mr. Ammel, what is meant by the phrase "per inquiry offer"?

Mr. Fulton: I still object. I don't know where it comes into this case.
The Court: I assume that this is merely a preliminary question and then he is going to follow it up by showing that it does have something to do with it.
Mr. Kramer: That is correct, your Honor.
The Court: He may answer.
Mr. Fulton: Exception.

A. That is an agreement entered into between an advertising agency and a radio station where the advertiser agrees to pay a specified amount of money per inquiry or per sale of the merchandise advertised, and it is usually [fol. 85] handled, I think in all cases is handled, by mail, the letters or cards coming into the station or directly to the advertiser who in turn delivers the merchandise to the individual making the inquiry.

Q. Mr. Ammel, has WEOL ever sponsored any per inquiry offers?

A. Yes, sir.

Q. In each of those what was the name of the manufacturer who made the offer and where was his place of business located?

A. Northwest Radio Advertising Company of Seattle, Washington. That involved the sale of the advertising on flower bulbs, flower seeds and beauty kits. The Marfee Advertising Agency of New York City involved a contract covering a life insurance company from San Antonio, Texas.

Q. What was the product or service that was offered for sale?

A. Insurance.

Q. Life, accident or health?

A. Life and accident insurance.

Q. Life and accident?

A. I believe it was life and accident, yes, sir. The third was Piano instructions from New York City.

Q. Piano what, sir?

A. Instructions.

Q. What was the name of the advertiser, if you remember?

[fol. 86] A. Dean Ross was the advertiser.

Q. The piano instructions that were to be conducted or carried on, were they to be carried on by mail, or——

A. By mail, through correspondence.

Q. Pursuant to the Northwest contract did you receive orders from customers in Ohio for bulbs?

A. Yes, sir.

Q. What did you do with those orders?

A. They were forwarded to the Northwest Advertising Company in Seattle, Washington.

Q. Pursuant to your contract with the advertising agency who represented the Mercury Life & Health Company, did you receive orders from people in Ohio for insurance that were sent to your station?

A. Yes, sir.

Q. What did you do with those orders?

A. They were forwarded to the insurance company in Texas.

Q. Pursuant to the contract for piano instructions with Dean Ross, did you receive orders from people in Ohio for piano instructions?

A. Yes, sir.

Q. What did you do with those orders?

A. They were forwarded to Dean Ross in New York City.

Q. Did you at any time request the Lorain Journal to [fol. 87] print as paid advertising material the daily radio log of WEOL?

A. I did not.

Q. Do you know whether any of your associates in the Elyria-Lorain Broadcasting Company did?

A. Yes, sir.

Q. Do you know whether or not the log was printed pursuant to that request as paid advertising matter?

A. No, sir.

Q. Did you at any time request the Elyria Chronicle-Telegram to print as paid advertising matter the daily radio log of Station WEOL?

A. Yes, sir.

Q. Was your request acted upon and, if so, by whom and what action was taken?

A. We were advised by the Elyria Chronicle-Telegram that they would not carry our log in a paid basis unless the programs——

Q. Excuse me, I want to try to straighten this out. You say "we were advised." Who advised you?

A. The advertising manager.

Mr. Fulton: Oh, I object.

Mr. Kramer: I'm not asking what advice was given.

Q. The advertising manager of the Elyria Chronicle-Telegram?

A. Yes, sir.

Q. What is the name of that advertising manager?

[fol. 88] A. Mr. Reisinger.

Q. Mr. Reisinger?

A. Yes, sir.

Q. Will you state to the Court what Mr. Reisinger told you?

A. Mr. Reisinger said——

Mr. Fulton: I do object to that. I think that is hearsay.

The Court: Reisinger told him personally.

Mr. Fulton: Why shouldn't Reisinger be brought in here to tell us? That's one of his own men.

The Court: Reisinger is with——

Q. By whom is Mr. Reisinger employed?
A. The Elyria Chronicle-Telegram.

The Court: It is objectionable, Mr. Kramer.
Mr. Kramer: I agree, your Honor.
The Court: I assumed it was some employee of the Lorain Journal when I first heard your question.
Mr. Kramer: We are not yet prepared to claim that the Elyria Chronicle-Telegram is a co-conspirator, your Honor.
[fol. 89] If that situation develops later on——

The Court: Well, someone from the Elyria Chronicle-Telegram can come in.
Mr. Kramer: Yes.
Mr. Fulton: Do I understand you are not claiming they are co-conspirators?
Mr. Kramer: I say we are not yet claiming that they are.
The Court: Proceed.

Q. Was your log printed in the Elyria Chronicle-Telegram?
A. No, sir.
Q. Have you been able to devise any other method of getting the log to the public in Lorain and vicinity?
A. Yes, in the County weekly newspapers. The weekly newspapers within the County print our log from time to time, and we also use the Klein News Agency from Cleveland. We have supplied them with 50 to 20,000 printed logs and they would distribute them to news outlets within the County.
Q. You speak of County weekly newspapers. To what newspapers do you refer?
A. There were two newspapers in Oberlin that are printed weekly, the Lorain Sunday News and the Westlake weekly newspaper. I don't recall the name of it. And the Wellington newspaper.
[fol. 90] Q. Are these logs printed as paid advertising matter or for free?
A. Free.
Q. Do you still desire to insert your log as paid advertising matter in the Elyria Chronicle-Telegram and in the Lorain Journal?
A. Yes, sir.

Mr. Fulton: Objection.

The Court: What is the objection? I suppose because it includes both the Lorain Journal and the other?

Mr. Fulton: Yes.

The Court: Sustained.

Q. Do you still desire to have the log printed as paid advertising in the Lorain Journal?

Mr. Fulton: Objection.

A. Yes, sir.

The Court: What is the objection?

Mr. Fulton: The objection now is that what he proposes or wishes I think is not particularly important or material to the issues in this case. It might be relevant somewhat to the subject matter, but I think it is not material to the issue.

The Court: He may answer.

[fol. 91] Q. What was your answer, sir?

A. Yes, sir.

Mr. Kramer: If the Court please, may I inquire as to what your Honor's daily schedule might be?

The Court: Well, I propose to hold sessions from 10:00 to 12:30 and from 2:00 to 4:30. I assume that is about the longest amount of time that counsel in a case of this sort can devote to the actual trial of the case, so we will adhere to that schedule. But I want to say to counsel now that there will be no session on Monday, because I will have another docket that has been set for that day. Bear that in mind. But today, tomorrow and Friday we will adhere to that schedule, and we will commence that schedule again on Tuesday morning.

Mr. Kramer: Then, if your Honor please, I have approximately ten radio listeners from outside the state of Ohio——

Mr. Fulton: Put them on out of order.

Mr. Kramer: I wanted to know if I could put them on before Mr. Ammel's cross-examination, because I want to [fols. 92-162] get them out of here tonight.

Mr. Fulton: Certainly.

Q. To the best of your knowledge was your log ever printed in the Lorain Journal?

A. No, sir, never was.

Mr. Kramer: That's all of the direct examination, your Honor.

(Adjournment taken to 2 o'clock p.m. on Wednesday, March 1, 1950.)

* * * * * * *

[fol. 163] Roy W. Ammel, being recalled, further testified as follows:

Mr. Fulton: Have you finished with your direct examination?

Mr. Kramer: Yes, I have.

Cross-examination of Roy W. Ammel.

By Mr. Fulton:

Q. Mr. Ammel, you have been connected and identified with this radio station since its inception; is that right?

A. Yes, sir.

Q. You were identified with it at the time that the application was made to obtain the license?

A. Yes, sir.

[fol. 164] Q. I take it you have been since its creation and during its operation its chief executive officer?

A. I am president of the company, yes, sir.

Q. Where does the company have its main offices?

A. The main office is in Elyria.

Q. And your office in connection with the company, then, is in Elyria?

A. Yes, sir.

Q. How many employees do you have in your office in Elyria?

A. 23.

Q. Is there an office in Lorain at all?

A. Yes, we have an office there.

Q. Where in Lorain?

A. At the Antlers Hotel.

Q. Is there a studio there, too?

A. Yes, sir.

Q. How many employees do you have there?

A. I believe there are three at the present time.

Q. There have been some witnesses in this case who testified that they lived elsewhere than Ohio and who listened to programs or had heard programs over or through your radio station in Elyria. May I inquire of you how you

learned that people outside of the State of Ohio heard your programs?

A. We received letters or cards from them.

[fol. 165] Q. What was the occasion of your getting these letters and cards?

A. We had a program on the air that we called "Far Away Fans" broadcast several times a day for, I believe, four or five weeks.

Q. During and covering what period of time?

A. We had short announcements up to, I believe, 11 o'clock at night and then we had a 15-minute program from, I believe, 11 to 11:15.

Q. You have given me the times during the day that took place. Over what period of time, of weeks or months or days did you have this running program "Far Away Listeners"?

A. I believe, Mr. Fulton, that we ran that program for four weeks on a daily basis. I don't recall if we had the programs on Sunday.

Q. That four weeks ends about what time?

A. Well, the program ended last week. It would be four weeks prior to that time.

Q. The next question more or less answers itself: that type of program took place subsequent to the commencement of the lawsuit that is on trial here and the one in which you are now testifying?

A. That's right.

Q. You knew of the pendency of the action when you put on that program? Before you put on that program you had [fol. 166] of course been interviewed by representatives of the Government? When I say "representatives" I want that to be broad and general so I won't be taking up a lot of time about who they were, and so forth. Is that right?

A. Yes.

Q. You had been interviewed on the subject matter of this lawsuit about how many times prior to putting on this program?

A. I would say three or four times, five times.

Q. And how many times have you been interviewed by representatives of the Government about putting on the program subsequent—maybe you can't answer it without some information yourself—but subsequent to the filing of this lawsuit?

A. I am sorry, I don't understand the question.

Q. Do you know when the lawsuit was filed?

A. No, I don't.

Q. But you do know you were interviewed by such representatives before the filing of the suit and subsequent to its filing?

A. Yes, sir.

Q. And then this program was put on still later and quite recently?

A. Right.

[fol. 167] Q. It was done at your own initiative, was it?

A. Yes, sir.

Q. And you did receive communications, of which this letter I now hand you, marked Defendants' Exhibit A is typical and illustrative; is that right?

A. (After examining same.) May I have the question again?

(Question read) No, I wouldn't say so.

Q. I will put it this way: as the result of that program, that far distant program, you received communications from people; am I right?

A. Yes, sir.

Q. Exhibit A in your hand is typical of the letters you got from those listeners?

A. No, it is not a typical letter.

Q. It is not a typical letter?

A. No.

Q. That letter you did receive, however, didn't you?

A. Yes, I did.

Q. Does this particular letter have to do with this program you have been asked about at all?

A. Yes, it does.

Q. It does have?

A. Yes.

Mr. Fulton: I will offer as part of the cross-examination Defendants' Exhibit A.

Mr. Kramer: No objection.

The Court: It may be received.

[fol. 168] Q. How many letters did you receive from radio listeners through this particular program?

A. Between 200 and 250.

Q. What is that?

A. Between 200 and 250; I don't know the exact number.

Q. Now, did you in the series of programs offer prizes to the listeners?

A. Yes, I did.

Q. What kind of prizes?

A. We offered a prize of $25 for the letter received from the individual the furthest distance from our station.

Q. Now, was that one prize of $25?

A. That was one prize.

Q. It wasn't one prize of $25 for each day during this period?

A. No, sir.

Q. And in response to that you got 250 letters all over a period of four weeks?

A. Yes, sir.

Q. Upon receipt of the letters what did you do with them?

A. The original letters were sent in to our legal counsel in Washington. Copies were retained at the studio.

Q. Did your legal counsel in Washington, now that we have mentioned the Attorney General, request you to send those letters to them?

[fol. 169] A. Yes, sir.

Q. Did you personally directly or your radio station or anybody under you send those 250 letters or any of them directly to the Department of Justice, Antitrust Division?

A. I don't believe any were sent directly to the Department of Justice.

Q. It is fair to say you knew when you sent those letters on to your counsel they were to be turned over to the Department of Justice?

A. I assumed they would be, yes.

Q. Now, your assumption was based on knowledge that they would be turned over?

A. Yes, sir.

Q. I just wonder if I may put this to you in fairness, and of course his Honor will determine that: did you do this for the purpose of preparing evidence in this case?

A. Yes.

Mr. Kramer: I didn't hear the answer.

The Witness: I did.

Q. Now then, through the contest you did receive 250 letters from people who resided, all of them, from outside of Ohio?

A. I am estimating the number, Mr. Fulton. I don't know the actual number.

[fol. 170] Q. I understand, but the offer you referred to was made with reference to out of Ohio people?

A. Correct.

Q. Had you ever tried prior to this time to learn or ascertain the distance to which your programs travelled?

A. Yes, we had during our proof of performance period, as I recall about 30 days, received letters from listeners throughout the entire country, incidentally including Canada and Alaska.

Q. When you refer now to proof of performance, you mean by that what?

A. The Federal Communications Commission required a 30-day period, I believe, of operation during which time you are proving the engineering data, proving up the engineering data originally submitted to the Commission at the time the application was submitted.

Q. So that that data was being procured in connection with the case or cases consolidated, as shown on the front page of this paper, Exhibit 1: am I correct? That is the one you were interrogated about in direct examination.

A. No, sir.

Q. Was it in connection with some other proceeding than this?

A. Yes, it was.

Q. Was it in connection with some prior application [fol. 171] which had been made by you or your associates prior to this?

A. No, sir.

Q. But it wasn't in connection with this proceeding?

A. Not with that proceeding.

Q. In connection with what proceeding was this proof being made?

A. At the time application was made to the Federal Communications Commission for the authority to operate a broadcasting station the engineering staff employed by the applicant prepared from data which is available the information required by the Federal Communications Commission. Upon the acceptance of that data by the Commission the construction contract is issued to the applicant, and upon receipt of the construction permit the applicant proceeds to purchase the required and necessary equipment to

build the facility. After it is constructed and ready to go into operation the Federal Communications Commission requests you to prove the performance of the equipment. [fol. 172] Q. The physical equipment, mechanical equipment, is that right?

A. As a matter of fact, we were on the air for an 18-hour period daily for a period, I believe, of thirty days. It was during that period of time that the proof of performance was carried out.

Q. I don't want to be taking too long on this, and in order that we are not at cross purposes, may I ask whether that so-called experiment was in connection with a proceeding out of which you finally got your license to operate in Lorain?

A. That's correct.

Q. Do you remember what the docket number of that case was, by chance?

A. No, sir, I do not.

Q. Well, in this particular Exhibit 1, there was special attention called to paragraph 37 on page 13, and in that paragraph this language is set forth: "The applicant has offered the use of its proposed facilities on a sustaining bases to the representatives of educational, Governmental, agricultural, patriotic, charitable and religious organizations located in Elyria and surrounding towns of Lorain, Oberlin, Wellington, Amherst and Grafton." In what state are those towns located?

A. In Ohio.

Q. In Ohio?

A. Yes, sir.

[fol. 173] Q. Leaving that particular subject for just a moment, I am intrigued a little by this 37 again which remarked that you offered these facilities to various organizations including religious organizations. Did you ever turn down any advertising over your radio station because it might be offensive to various religious groups or societies during its operation?

A. Not to my knowledge.

Q. Have you ever?

A. Not to my knowledge, no, sir.

Q. Have you ever turned down any kind of advertising?

A. Yes.

Q. What kind?

A. Well, we have been asked to take on some advertising of hard liquors, we turned those down. I do recall having cancelled a contract that had been signed, that as I recall it was an Elyria applicant for advertising. I don't recall the religious organization, I believe it was Rev. Hogan, but I do not recall the name of the organization that he belonged to.

Q. You turned him down?

A. Sir?

Q. You turned down the ad which he proposed and offered to you?

A. Yes, sir, we did.

Q. Can you think of any other ads that you have turned [fol. 174] down without regard to reason, now?

A. We might have——

The Court: What was that last part of your question?

Mr. Fulton: I said without regard to the reason.

The Court: Just what do you mean by that?

Mr. Fulton: I don't know myself. I said turned down without any reason given. I will withdraw that part of the question and put it this way.

Q. Do you recall any other advertisements that you have rejected than those you have already told us about?

A. No, sir, I can't.

Q. When you were interrogated in reference to certain of these exhibits, especially that group from 14 to 45, in order to answer some of the questions as to whether or not, for example, the copy of the script came from outside of Ohio, you used, and quite properly too, to aid you in answering the questions a memorandum. I suppose you still have that with you?

A. Yes, sir.

Q. Through that memorandum you were able to say that in certain instances you didn't know whether the material itself came from outside of the state of Ohio, or not, that's right, isn't it?

[fol. 175] A. Yes, sir.

Q. Now, your refreshing memorandum which gave you that answer came, of course, from the records of your company, your business, your station, is that right?

A. Yes, sir.

Q. It means, then, that your own records at your station

would not reveal clearly whether or not they did come from outside of Ohio, is that right?

A. No, it is not, Mr. Fulton. I did not have sufficient time to check on all of our contracts.

Q. You mean that the negative answer is that you didn't find out whether they came from without or within the state of Ohio, is that right?

A. Yes, sir, that's true on some

Q. Or does it mean your records don't show which it is?

A. No, I think our records would clearly indicate whether they came from within or without the state of Ohio.

Q. Well, I have a copy of Exhibit 2 and I will hand you this Exhibit 2. That's the list of both baseball and hockey. Under baseball and hockey in the preliminary explanatory paragraph it specifies on these things, baseball in the one instance and hockey in the other, to be carried by phone lines from, in the case of baseball, the ball park to the basic station and under hockey carried by phone lines to basic station. Tell me, please, what basic station means.

[fol. 176] A. WJW.

Q. Where is WJW?

A. Cleveland.

Q. In Cleveland?

A. Yes, sir.

Q. So that as it came to and thereafter through and over your station, the origin, immediate origin, was Cleveland, Ohio, both for the baseball and hockey on Exhibit 2?

A. That's right.

Q. Now, on this matter of Exhibit 47, and I'll use my copy for the purposes of time saving, this is the proposal, or I guess it's a contract in letter form from you addressed to Capital Records, Inc. You told us about the source of those. Paragraph 3: "We agree that the transcribed selection service furnished pursuant to this agreement shall be used solely for radio broadcast to the general public of local sustaining and locally sponsored programs." That's recited in that paragraph, isn't it?

A. Yes, sir.

Q. Now, that language "local sustaining and locally sponsored programs" of course means these programs otherwise originating in your station, is that right?

A. I don't quite understand that.

Mr. Kramer: I object to the question. I can't understand it.

(Discussion had.)

[fol. 177] Mr. Fulton: Strike out the word "otherwise".

(Question read by reporter.)

A. The locally sponsored and local sustaining portion of it, yes, it originates from WEOL.

Q. So that you were agreeing with Capital Records that whatever they sent you, and which came by way of disks—is that right?

A. That's right.

Q. —that those disks would come to you and once you got them in your possession you then would use them at your station. That's right, isn't it?

A. Yes, sir.

Q. But you would use them at your station and on programs through your station which were completely local in nature. That's right, isn't it?

A. I don't understand that question.

Mr. Kramer: I object to the question. He is asking the witness to interpret the contract. You can ask him what his understanding was.

Q. It was your understanding, then, that when these disks came to you that you then would put them on an appropriate mechanical device or machine that would bring them out and put them over the air through your radio station?

A. That's right.

Q. And whatever disks or records you got from Capital Records, Inc. and whatever programs emanated from those [fol. 178] disks came through your radio station only after you put them to use there. That's right, isn't it?

A. Yes, sir.

Q. That is, Capital Records didn't put them on at some point outside of Ohio, transmitting to your station and from your station transmitted out?

A. No, sir.

Q. You took the physical disks and put them to work in your station, that's right, isn't it?

A. Yes, sir.

Q. And you understood that use was to be in connection with local sustaining and locally sponsored programs, is that right, is that your understanding?

A. That's the terms of the contract.

The Court: Where were those disks shipped?

The Witness: They were shipped from Hollywood, California.

Q. In connection with what kind of program originating at your station did you use those disks?

A. Well, we used them on sustaining programs and also on time periods that had been sold to advertisers.

Q. Now, may I ask you whether the questions which I have put to you with respect to Capital Records in relation to this Exhibit 47 and the answers you gave apply in the same manner in respect to the contract with Broadcast Music, Inc. Exhibit 50?

[fols. 179-192] A. It's difficult for me to answer that question, Mr. Fulton. I don't know just what questions preceded this last question.

Q. I suppose that's true.

A. It's entirely a different contract.

Q. What was it that B. M. I. supplied to you?

A. Transcriptions, recordings.

Q. Again, they make transcriptions and recordings on some form of disks?

A. Yes, sir.

Q. From which they would be played?

A. Yes, sir.

Q. In other words, it is in a general way similar to this Capital Records?

A. Yes, sir.

Q. Similar to it?

A. Yes, sir.

The Court: We will suspend at this point.

(Adjournment taken to Thursday, March 2, 1950, at 10:00 A. M.)

* * * * * * *

[fol. 193] Roy W. Ammel, being recalled to the stand, further testified as follows:

Further Cross-examination of Roy W. Ammel.

By Mr. Fulton:

Q. I think that the rest of this cross-examination will be somewhat shortened now, but yesterday I think I did ask with regard to Capital Records and 50 was the B. M. I. With reference particularly to the fact that those required use on your local sustained and local sponsored programs: —am I right I did inquire about that?

A. Yes, sir.

Q. Now, there was offered through you some other exhibits, 52, 53 and 54, and these happen to be the American Society of Composers, Authors and Publishers. I will just refer to the heading at the top. They too are made in contemplation of whatever was furnished to you for use on your programs as local station programs, is that right? In the one instance, 52, local station blanket sustaining license?

A. No. 52 is the American Society of Composers, Authors and Publishers contract local station blanket sustaining license.

Q. Now, No. 53 and 54 both are local station blanket com-[fol. 194] mercial licenses, are they not?

A. Yes, sir.

Q. They are alike as being of the same type, I mean?

A. One license, the Exhibit 53 is the agreement between the American Society of Composers, Authors and Publishers and Radio Station WEOL. Exhibit 54 is an agreement between the American Society of Composers, Authors and Publishers and Radio Station WEOL-FM.

Q. Now both, however, are designated as local station blanket commercial licenses, isn't that correct?

A. Yes, sir.

Q. Now, could you lean over here to help the Court and get in the record this: now, each of these contracts, I know they speak for themselves, but I want to read this for whatever help it may be to anybody, have some definitions in Paragraph 2?

A. Yes, sir.

Q. "A 'local program' is defined, "as used in this agreement shall be deemed to mean any program broadcast by the

station other than a network program.'' That is correct, isn't it?

A. Yes.

Q. Then it provides: '' 'Local commercial program' as used in this agreement shall be deemed to mean any local program in connection with which a sponsor pays directly [fol. 195] or indirectly for the use of the broadcasting facilities of the station.'' Is that right?

A. Right.

Q. '' 'Local sustaining program' as used in this agreement shall be deemed to mean any local program, other than a local commercial program.''

A. Yes, sir.

Q. Those same definitions are found in all three exhibits, 52, 53 and 54, being contracts with the same party, namely the American Society of Composers, Authors and Publishers, is that right?

A. I would like to check it first.

Q. I will say to you, to save the time, that is true.

A. Yes, they are.

Q. They all contain the same clauses and the same definitions. There was offered through you in evidence Exhibit 46, United Press Association. Through that contract what did the United Press furnish you for use through your radio station, I mean generally and briefly?

A. They supplied us a teletypewriter and news 24 hours a day.

Q. And that news came to your station from Columbus, am I right, Columbus, Ohio?

A. I can't answer, I don't know.

Q. Don't you have any idea where it came from?

[fol. 196] A. I don't know the immediate connections between the teletypewriter and our studio and the point of origin within the State of Ohio, if there is a point of origin in the State of Ohio.

Q. Do you have any idea there is a point of origin in the State of Ohio such as was in connection with this Exhibit 2, I think the baseball assignment, the basic station there being Cleveland?

A. No, the only thing I know, Mr. Fulton, is that the teletypewriter is connected to telephone wires and telephone circuits.

Q. You could, of course, get the answer to the question?

A. I can get it all right.

Q. Will you get that and supply it to us through Mr. Kramer or one of his associates, please?

A. Very glad to.

Mr. Kramer: If the Court please, he can not only do that, but we are going to call newspaper witnesses who will be glad to answer your question in respect to newspapers, and we will also call Mr. Isadore Horvitz, who will be able to answer relative to the arrangement.

Mr. Fulton: Yes, he will be able to answer it.

Q. Now, I show you Exhibit 14, which is one of the group [fol. 197] of exhibits, 14 to 45, having to do with advertising contracts between your Station WEOL and your advertisers, and ask you whether or not that is the type of contract form that you used for your local advertisers?

A. Yes, this is the contract form used.

Q. Now, it happens that the others of that group, Exhibits 14 to 45, had only the first sheet, not this second sheet, but I assume all those exhibits would have the same form second page?

Mr. Kramer: I object, your Honor, because it isn't a question of what counsel assumes.

Mr. Fulton: I will change the form of the question.

Q. This Exhibit 14 is the first of the series of Exhibits 14 to 45 and they are contracts, as you say, and this one 14 is typical of the contracts with your local advertisers, and Exhibits 14 to 45 have been offered in evidence here. Now, I have checked and found that none of the others in that group, 14 to 45, have this second page attached. Now my question is do all of the other exhibits, if they were complete, and each of them, have that second page as part of your form contract?

A. Yes, sir, the second page is the printing appearing upon the reverse of each contract.

[fol. 198] Q. And that would apply to all of these Exhibits 14 to 45?

A. They are on the same form, yes.

Q. Now, I notice on this Exhibit 14 there is contained in Paragraph 2, called "Termination and Renewal" this provision: "This contract may be terminated by either party by giving the other 28 days prior written notice, providing that no such notice shall be effective until 28 days after the

start of broadcasts hereunder.'' Was that cancellation clause contained in all of the contracts you made with your local advertisers? You might take a look at it to see if I have read it correctly.

A. I believe we have in the second contract form, Mr. Fulton, an addition to that one.

Q. An addition to that?

A. Yes.

Q. I have a copy of the contract with Maytag Sales & Service, Exhibit 14. Do you know whether or not Exhibit 15 with George Hermann had that cancellation clause?

A. Yes, sir.

Mr. Kramer: If the Court please, may I interrupt? If counsel is undertaking to prove that each of the local advertising contracts of the Elyria-Lorain Broadcasting Com-[fol. 199] pany contained a clause permitting the advertiser to cancel upon giving certain days of notice, I will so stipulate.

Mr. Fulton: That is all I need then for that.

Q. I will show you another copy of Exhibit 3 which happens to be one of the so-called national advertising contracts, and this is with the Marfee Advertising Corporation. That contract was on the form of the advertiser?

A. That is the advertising agency's contract form.

Q. Now, may I ask whether that is the entire and whole contract?

Mr. Fulton: Now, Mr. Kramer, you might help me about this. Is that true in effect of all these Exhibits 3 to 13?

Mr. Kramer: For the national contracts? That I don't know.

[fol. 200] Q. This is the Exhibit 3 I have asked you about (handing Exhibit to witness). Now, Exhibit 4, is that the contract of the advertiser?

A. Yes, sir.

Q. And the name is what?

A. Keeling.

Q. Is that the whole contract?

A. That is the whole contract.

Q. Exhibit 5 is MacManus, John & Adams, Inc. Is that the whole contract?

A. Yes, sir.

Q. Is your answer the same respecting Exhibit 6, Maxon, Inc.?

A. Yes, sir.

Q. May I inquire whether your answer is the same in respect to Exhibit 7, Kudner Agency, I guess for General Motors Corporation (handing Exhibit 7 to witness)?

A. I can't answer that question.

Q. You can't answer as to that one?

A. Not as to that contract, no.

Q. Do you know whether or not that Exhibit 7, which says it is subject to standard conditions on the back—you don't have the back portion of it?

A. I do not.

Q. You don't know anything about the cancellation of that?

A. No, sir.

Q. All of these contracts for advertising of other than [fol. 201] local people are contracts that were prepared on forms submitted by the advertiser. Am I right about that?

A. To the best of my knowledge, yes.

Q. You did mention yesterday, and we won't take too much time about this, but you did mention yesterday about the arrangement for this long distance program, didn't you?

A. Yes, sir.

Q. And I think then after you had finished that you sent the results on to your lawyer for use by the Department of Justice; is that right?

A. I sent them to our engineering counsel in Washington, yes, sir.

Mr. Kramer: Objection, if your Honor please. I don't know what the answer using the word "them" referred to. Did you mean by "them" the results or the letters?

The Witness: The letters.

Q. Did you talk with representatives of the Department of Justice then about the results of this campaign?

A. Yes.

Q. And of this program?

A. Yes, sir.

Q. More than once?

Mr. Fulton: Now, this cross-examination is for the limited purpose that I suggested.

Q. More than once?

[fol. 202] A. I think we discussed it two or three times, yes.

Q. Now, can you tell me with whom you discussed it on these two or three occasions?

Mr. Kramer: Objection, your Honor.

The Court: What is the objection?

Mr. Kramer: The same objection I made to the interrogatories. I do not think the name of Government agents should be revealed, the names of people who conducted the investigation. I am perfectly willing to stipulate that he talked to me about it on either two or three occasions, but I do not want the names of other investigators brought out.

The Court: What are you seeking to develop by that, Mr. Fulton?

Mr. Fulton: I think this, your Honor, I think this evidence will indicate that this man has a very definite self-interest in the outcome of this litigation.

The Court: Assume that he does. Does it make any difference in so far as the legal questions are concerned?

Mr. Fulton: It won't make any difference about the legal questions, if the facts——

The Court: If you are seeking to test his credibility, which is the matter about which you spoke, of course, I [fol. 203] will permit it. It is perfectly proper. But if you are seeking to determine motives, here is a suit filed by the United States Government seeking to enforce a law. Regardless of the motive of any individual who makes a report or who makes the complaint, if there is an offense it is the duty of the court to enforce it. If there is no offense committed against the laws of the United States, again, regardless of the motive of the complaint, it makes no difference.

Mr. Kramer: If the court please, I want to make it clear, my objection is confined solely to the revelation of the names of employees of the Department of Justice who participated in the investigation of this case, and my objection is only on that ground.

Mr. Fulton: All right. I will put it this way, then.

Q. After this program was put on, with whom of the lawyers in the Department of Justice—and I think you don't object to that——

Mr. Kramer: Yes, I do.
Mr. Fulton: You do?
Mr. Kramer: Yes.
The Court: He may answer that question.

Q. Whom, among the lawyers in the Department of Justice, did you talk with about the reports you got from the listeners in connection with this program?
[fol. 204] A. I think with Mr. Kramer.

Q. Did you talk with any of Mr. Kramer's assistants, as well?

A. No, sir.

Q. How many times did you talk with Mr. Kramer?

A. Two or three times.

Q. I am talking about since that program went on.

A. I'm sorry. I misunderstood you probably, Mr. Fulton. I understood we were discussing the letters that were received from the listeners on the far away program.

Q. That's right. I am talking about the conferences you had with Mr. Kramer or any of his staff since this broadcast went on and you got the letters back?

A. Two or three times.

Q. Where?

A. In Washington, Elyria, and by long distance telephone.

Q. Maybe you did answer this and if you have, I have forgotten the answer. Did you talk with anyone else on his staff?

Mr. Kramer: About what? Anything at all?
Mr. Fulton: About the same thing. I am still talking about the same thing.
Mr. Kramer: All right.
Mr. Fulton: I don't want to incorporate that in every question.

A. No, sir.
[fol. 205] Q. Now, without giving the names, did you talk with anybody identified with any other department or agency of the government than the legal department of the Anti-Trust Division of the Department of Justice?

A. No, sir.

Q. Did you talk with any persons not identified in any way with the Government?

A. Relative to the program?

Q. Yes.

A. Yes, sir, I did.

Q. With whom?

Mr. Kramer: I object, your Honor. I don't see the relevancy of that.

The Court: Oh, unless he is trying to impeach his statements here by calling somebody else to say that he didn't say that—is that what you are seeking to show?

Mr. Fulton: I am not sure I am ready to say I am doing that yet.

The Court: What difference does it make if he talked with a thousand people?

Mr. Fulton: I am not interested in this man's motive or motivation, but I am interested in his interest, and his interest may be such that—I am not attributing to him now dishonesty—such that just subconsciously he will make [fol. 206] of his activity out there interstate commerce and the purpose of his station engagement in interstate commerce when that is not the fact at all.

The Court: Well, how in the slightest manner that could change the character of the commerce, is something I don't understand. I wish you would enlighten me on that. It is either interstate commerce or not interstate commerce, and you could talk to a hundred thousand people and it wouldn't make it interstate commerce or wouldn't fail to make it interstate commerce. If you are seeking to impeach him, as I say, by showing contradictory statements made to people outside of the court room, then I will permit you to examine.

Mr. Fulton: No, your Honor, what I am trying to show here is consistent with the theory I have, that this station is not engaged in interstate commerce, that whatever of its activities went across state lines were so incidental as to not mean that at all, and to show that he has such an interest in this litigation that in the nature of things he is trying to portray his station as being engaged in it when it isn't.

The Court: I don't think he has made one statement that it is interstate commerce. I don't believe I heard it.

Mr. Fulton: He testified about this program.

The Court: He testified about what the programs were. [fol. 207] He did testify as to that. I am perfectly satisfied to let you question him concerning people who talked to him with the understanding that that will test his credibility.

Q. I show you now Exhibit B (handing exhibit to witness). What is it?

A. This is a piece of printed matter indicating the half millivolt daytime pattern of the station WEOL, also the two millivolt night pattern of the same facility, market. data, indicating the area in which the facility is heard, and the primary area in which it is heard.

Q. Who put that out?

A. The Elyria-Lorain Broadcasting Company.

Mr. Fulton: We offer it in evidence as part of the cross-examination.

Mr. Kramer: No objection, your Honor.

The Court: It may be received.

Q. For what purpose was it put out?

A. For information supplied to prospective advertisers.

Q. And what distribution was made of it?

A. It was supplied by the sales staff to the prospective advertisers.

Q. Among other things it contains a sort of map or diagram of this market, and I will call it market advertising area, both for day and the night season. Am I right?

A. It indicates, I believe, the day time and the night time [fol. 208] pattern.

Q. For the market areas, am I right?

A. No, you are not right. It doesn't specifically——

Mr. Kramer: Would you like to look at the exhibit while you are answering?

(Thereupon Mr. Fulton handed Exhibit B to the witness.)

A. It does not cover a specific market area, Mr. Fulton. It indicates the half millivolt daytime pattern and the two millivolt night time pattern.

Q. What do you mean by "millivolt"?

A. It's the daytime—it's the half millivolt daytime pattern, which is indicated in the upper portion of this exhibit. It indicates the primary listening area during the day time broadcast period.

Q. Taking the primary listening area for the daytime, together with the data that appears on there, as I look at it there are only four counties in Ohio covered 100%; am I right?

A. Oh, yes, there are seven counties on the half millivolt contour map.

Q. Now, look over here in this column (indicating). This is counties covered during the day, per cent of county covered, and as I look down I see Erie county 100%; is that right?

A. Yes, sir.

[fol. 209] Q. You put this out, didn't you?

A. That's right.

Q. Lorain County 100%?

A. That's right.

Q. Medina County 100%; is that right?

A. That's right.

Q. And Summit County 100%?

A. That's right.

Q. And that is all that is listed 100%. That is right, isn't it?

A. That's correct, yes, sir. That's on the market data portion of the mailing piece.

Q. All the counties listed there, of course, are counties in Ohio, aren't they?

A. Yes, sir.

Mr. Kramer: Mr. Fulton, I don't want to prevent you from bringing out something by examination rather than by stipulation, if you still want to, but I do want to point out to the court that we offered Exhibit 1, and in Exhibit 1 Conclusion 6 of the Federal Communications Commission was that the granting of a license was for a local station in Elyria, Ohio, and in Lorain, Ohio, and there is no dispute about it.

Mr. Fulton: I think that is true, and I am coming to that next.

Q. Now, it's on that that you put out this—I think you [fol. 210] call it brochure—for the benefit of your advertisers. Am I right?

A. That's right.

Q. All right, sir. Then I would like to ask a few more questions about it, if I may. Take your night time. There are only nine counties in Ohio covered. Am I right?

A. Yes, sir. That's on the two millivolt night time pattern.

Q. Now, you made that, of course, based on—I'll call it the permission granted by the Communications Commission as to area allotted to your station. Am I right?

A. I don't quite understand that question.

Mr. Kramer: Would you repeat that question?

(Question read by reporter.)

Mr. Kramer: I object, if the court please, on the ground that the witness has not testified that the Commission allotted them any area.

Mr. Fulton: Your stipulation was somewhat to that effect, or your offered stipulation or statement. I will withdraw the question.

Q. In any event, this whole brochure in relation to daytime and night time area reached by your radio station was designated by you as "WEOL market data", is that correct?

A. That is correct, and it shows the source of the information from which this brochure was prepared.

Q. This will speak for itself, and his Honor will read it, [fol. 211] so I am not going to take the time to go over each item on it, but in addition to showing the counties, day and night, it shows the percentage of each county, doesn't it, that is reachable, as I get this definition "market data"; am I right?

A. Yes, sir.

Q. For example, in some instances, using this as an illustration, night season, Stark County, 5%?

A. Yes, sir.

Q. Stark County is the county of which Canton is the sea-; is that right? Well, Stark County is the county in which Canton is located. I'll put it that way. You may not know it is the county seat.

A. No, I don't know that.

Q. You know that Canton is in Stark County, don't you?

A. Yes, sir.

Q. Now, I will have you take a look at the day time map, and the day time map covers enough of Stark County to include Canton, Ohio, doesn't it?

A. Yes, sir, it does.

Q. But the night time map of Stark County doesn't include enough of Stark County as to embrace the City of Canton, does it?

A. No, sir.

Q. And this brochure shows the population of those counties or parts of counties that are reached, or pur- [fol. 212] ports to, doesn't it?

Mr. Kramer: Objection, your Honor. The brochure speaks for itself.

Mr. Fulton: Of course it does. I know it does, and I will stop if your Honor wants me to, but I thought it might be of some aid.

Mr. Kramer: I'll withdraw the objection.

(Question read by reporter.)

A. Yes.

Q. I'll save a little time. It purports to show data in respect to what, other than population, in the headings on each column, starting with "population" and going across? Just read off the headings of the columns.

A. All the way across?

Q. That's right.

A. The headings are: Counties covered during day; percentage of county covered; population of area covered; radio homes in area; total retail trade, and that subdivided into stores and sales; total food groups, subdivided into stores and sales; total drug trade, subdivided into stores and sales; total general merchandise, subdivided into stores and sales.

Q. Where did you get the map or plat, the data that is on that brochure?

A. From the engineering data submitted to the Federal Communications Commission by our engineering counsel. [fol. 213] Mr. Fulton: Did you see this (handing documents to counsel)?

Mr. Kramer: I have no objection to your offering that in evidence.

Q. I now show you Exhibit C, and Government counsel have agreed it may be received in evidence, and ask you if that contains the engineering data that was attached to the application to which you referred in your last answer. I might say that Exhibits B purports to be a certified copy of that engineering data that was sent down and accompanied your application.

Q. I don't know whether the information was taken from this or not, sir.

Q. Did you supervise the preparation of the map portion of this brochure, Exhibit 66?

A. No, sir.

Q. Did you ever make any comparison of it with the lines as shown on the engineering plat filed with your application? Did you ever do that?

A. I can't answer that question directly. I can say that the information in that brochure was prepared by our manager, Mr. Thornquist, and whether he took the contour of the particular exhibit that you have there or not, I don't know.

[fol. 214] Mr. Kramer: If the court please, Mr. Thornquist will be a witness, and while I shall not examine him on the map, if counsel wishes to, he may do so at that time.

Mr. Fulton: I may do that, Mr. Kramer.

Q. When you look at your day time map, the line being the line around the yellow portion, which is the area referred to in your brochure, and this general white line on your engineering map, does that appear to correspond pretty well? I am putting them side by side.

Q. Yes, they are substantially the same.

Q. And the same is true in respect to the night time map, is it not?

A. What you are showing here, Mr. Fulton, is our FM calculated field intensity contour. It does not apply.

Q. I am sorry. Look at this (indicating).

Q. Again, this is the day time contour.

Q. Now I have got it (indicating).

A. It is approximately the same, yes, sir. However, it

does not show the two millivolt night time pattern on the chart that you have there.

Q. One other question, a little broader than the one I put. Did you send out this brochure, Exhibit B, to prospects for advertising, or to prospective advertisers? Did you?

A. Would you mind repeating that question? I am a [fol. 215] little confused.

Q. Did you send out this brochure with its data to prospective advertisers?

A. Yes, sir.

Q. In what area did you send and distribute copies of this exhibit?

A. I think that pretty well covered the entire United States. We sent copies out to the West Coast. I know there were some in New York, and in the South.

Q. General distribution?

A. I don't know what you mean by general distribution, Mr. Fulton.

Q. That is, you sent them out to National advertisers who might use your local facilities, is that right?

A. Yes, sir, that's correct.

Q. To show them the area that your station covered?

A. That's right.

Q. Isn't that right?

A. Yes, sir.

Q. And you sent them out to local advertisers to show the area that your station covers?

A. Yes, sir.

Q. For their purposes, is that right?

A. Yes, sir.

Mr. Fulton: I think that is all.

[fol. 216] Redirect examination of Roy W. Ammel.

By Mr. Kramer:

Q. Mr. Ammel, on page 159 of the transcript yesterday you were asked the following question: "What was it that BMI supplied to you?" and you answered, "Transcriptions, recordings." Are you sure that is right?

A. No, I was in error on that, Mr. Kramer.

Q. What should your answer have been to the question: "What was it that BMI supplied to you"?

A. Broadcast Music, Incorporated, is a licensing agency.

Q. It gave you a license to play copyrighted musical selections?

A. That is correct.

Q. And had you been asked the same question with respect either to Capital or Lang-Worth, Exhibits 47 and 48, respectively, your answer to the question would then have been correct, would it not?

A. That is correct, yes, sir.

By Mr. Fulton:

Q. I take it you discussed that subject matter elicited by the answer given yesterday afternoon, with Mr. Kramer?

Mr. Kramer: Did you?

A. No, I did not.

Q. Did you talk about it with anybody?

A. Yes, sir.

Q. On his side of the lawsuit?

[fol. 217] A. No, sir.

Q. How did he learn it?

Mr. Kramer: I learned it through his counsel, who told me.

Mr. Fulton: His counsel?

Mr. Kramer: His counsel.

Mr. Fulton: His lawyer?

Mr. Kramer: His lawyer, Marcus Cohen.

Q. Did you talk with the gentlemen on the other side last night?

A. I don't understand your question.

Q. Did you talk with them about the case?

A. What do you mean by "the other side"?

Q. Government counsel?

A. No, sir.

Q. You are right when you say you don't know what I mean by the other side, because they are government counsel, and they are your counsel and my counsel, counsel for all of us. Were you over at their offices last night?

A. No, sir.

Mr. Kramer: May I continue now with my examination?

Mr. Fulton: Oh, I beg your pardon. Hadn't you finished, Mr. Kramer? I am sorry.

By Mr. Kramer:

Q. Mr. Ammel, will you explain to the court just what you meant, if you prepared it, which I don't know, in Ex-[fols. 218-324] hibit B by the word "coverage" or "covered"?

A. Mr. Kramer, I did not prepare this myself. It was prepared by Mr. Thornquist, our manager, at the time or prior to the time of our coming on the air.

Mr. Kramer: I will wait for him, then. That is all.
Mr. Fulton: That is all.

(Short recess taken.)

* * * * * * *

[fol. 325] Mr. Kramer: If the court please, in line with what I now understand to be the proper procedure, I propose to cross-examine Mr. Horvitz.

The Court: There is not any question whatever about your right to cross-examine him.

Isadore Horvitz, one of the defendants, being called as a witness for cross-examination, testified as follows:

Cross-examination of Isadore Horvitz.

By Mr. Kramer:

Q. What is your name?
A. Isadore Horvitz.
Q. What is your address?
A. 18200 Shaker Boulevard, Shaker Heights, Ohio.
Q. What is your occupation?
A. President of the Lorain Journal Company.
Q. And have you any other occupation?
A. Yes. I am President of the Horvitz Company, Vice President of The Highway Construction Company, Incor-

porated, and President of the Mansfield Journal Company of Mansfield, Ohio.

The Court: Speak up, please.
The Witness: Want me to repeat this?
The Court: No.

Q. President of the Mansfield Journal Company was the last thing I heard.
[fol. 326] A. Mansfield, Ohio.
Q. Anything else?
A. That's all.
Q. Does the Lorain Journal have any competition in the dissemination of news, advertising, and other information in the City of Lorain?
A. There is a paper called the Sunday News which is in competition.
Q. Any others?
A. There are some other newspapers that circulate in Lorain, labor papers, and stuff of that kind. Cleveland papers circulate, out of city papers come in Lorain.
Q. Now Mr. Horvitz, I asked you if you had any competition in Lorain, not what other papers circulate there. Am I to take it from your answer that any paper that circulates in Lorain competes with you?

Mr. Fulton: Well, if your Honor please, if that question is meant to ask this witness to give a conclusion as to what is or is not competition, I object to it.
The Court: On what ground?
Mr. Fulton: I think he may be asked what other papers are there, but what papers, if any, are in competition with his paper, I don't think he should be asked. That is something your Honor may be required, I am not sure you may be, to decide in this case. It is a conclusion of law, perhaps.
[fol. 327] The Court: Whether there is or isn't competition?
Mr. Fulton: That is right,—on this type of competition.
The Court: I would like to hear from you. I never heard that to be a question of law. I always understood that to be a conclusion of fact or conclusion to be drawn from the facts rather than a conclusion of law.
Mr. Fulton: Even then, if it is a conclusion to be drawn

from the facts, I think the witnesses should be asked the facts rather than for a conclusion.

The Court: Of course it all depends on who the witness is. If the witness happens to be one who is President of the newspaper, he certainly is conversant with the situation sufficiently to state to the court whether there is or there is not competition. Now, if he was a lay witness, an employee of this paper who was called, there might be some doubt about it, but certainly the President of the Company is competent or should be competent to state whether there is or there is not any competition. Whether or not the facts support it, is another question.

Mr. Fulton: I must confess I have more difficulty than your Honor with the meaning of that term. For example, if somebody says, "Is there competition between A and B?" immediately the question arises, what is meant by [fol. 328] the term, "competition". It might be great or small or none. I think he can be asked what other papers are circulated there.

The Court: He can ask what the papers are, and what the extent of their circulation is, and then he may be asked whether in his judgment there is or is not competition.

Mr. Fulton: Perhaps it may not be of such great importance. I just wanted to understand the meaning of the word "competition".

Mr. Kramer: Would the reporter read the last question?

The Court: You asked him whether there was or was not any competition with any other papers.

Q. Is there or is there not any competition with you in the City of Lorain from any other daily newspaper?

A. Well, I can't answer that directly. We have competition as far as news is concerned, but if we have to get out a paper that competes with the Cleveland papers, and also all the other papers, the paper has got to be a good newspaper. If you call the fact of gathering news, seeing that news is properly gathered, we do have competition.

Q. Is there any competition with you from the out of town and out of county newspapers in the dissemination of advertising of local merchants in Lorain?

A. You are talking of papers outside of Lorain only, and [fol. 329] daily papers?

Q. Daily papers published outside of Lorain County. Do you consider them a competitor?

A. I don't know of any out of city newspaper that carries any Lorain advertising, that is, local advertising.

Q. Now, do you know of any out of city published newspapers that circulate in Lorain that carry any substantial amount of local news pertaining to Lorain as distinguished from national coverage?

A. Well, the Cleveland papers carry local Lorain news.

Q. I appreciate that. My question is, is it substantial, is it significant?

A. Well, it is enough to maintain their circulation there. They can't maintain circulation in Lorain in any volume unless they have Lorain news.

Q. So you regard the Cleveland Plain Dealer a competitor of yours in the publication and circulation of news pertaining to Lorain in Lorain; is that right?

A. Yes, sir.

Mr. Kramer: I might say to your Honor that here again we could have avoided considerable time, I think, had the Government's complaint and the defendants' answer both been a little more precise. I would like to read you the point we are getting at.

Paragraph 11: "The Lorain Journal, the Lorain Sunday News and Radio broadcasting station WEOL and WEOL-[fol. 330] FM are the only significant sources of local news advertising and other information disseminated regularly for residents of Lorain, Ohio."

And what was the answer given to that? Paragraph 6: They deny that the Lorain Journal, Lorain Sunday News and said broadcasting stations are the only significant sources, and the word "sources" was underlined. From that I take it, Mr. Fulton, that your objection is solely to the word "sources". Is that it?

Mr. Fulton: Unfortunately I know what you are talking about. I remember the word "sources", but at the time I didn't know what you were driving at in the pleading when you used the word "sources". I had the same difficulty a while ago when you used the word "competition", and as you have used some other words in the last couple of questions.

Mr. Kramer: Well, we will have to go into it.

Mr. Fulton: When you were talking about sources I didn't know whether you were talking about sources emanating only from Lorain or if they were acting as a conduit.

Mr. Kramer: I mean conduit.

Mr. Fulton: "Conduit" rather than "source".

Mr. Kramer: I wonder if it is the position of the defendants that that statement in the Complaint isn't true. Because if it is, we are going to have to prove it, and it is [fol. 331] going to take some time.

Q. Do you consider that radio station WEOL is a competitor?

A. I consider them competitors.

Q. How about WEOL-FM?

A. Yes.

Q. Calling your attention to the year 1930, did you have any more competition in the dissemination of local news, advertising and other information in the City of Lorain at that time that you do not have now?

A. I recall that there were two newspapers in Lorain at that time.

Q. One was the——

A. The Lorain Journal and the Lorain Times Herald.

Q. Did the Lorain Journal purchase the Time-Herald?

A. Yes. There was a consolidation.

Q. Where did the Lorain Journal obtain the funds to make this purchase?

A. I didn't handle that transaction. That was in 1930. S. A. Horvitz handled that transaction. In '32 I think the consolidation took place.

Q. That is not an answer to my question, unless you mean you don't remember or don't know.

A. I don't know the exact details of the financing.

Q. I don't want the exact details. I want your best recollection of how the Lorain Journal got the funds to make [fol. 332] the purchase.

A. As I recall it, there were no funds paid at that time; there was a series of notes issued.

Q. Directly to the vendor?

A. Yes.

Q. The vendor got no cash, to your best recollection?

A. That's right.

Q. How long have you been with the Lorain Journal, Mr. Horvitz?

A. I think I was Secretary from the early '30's until about 1934, and in 1935 I became President.

Q. You have been with them since the early '30's?

A. Yes, sir.

Q. Since you have been connected with the company, has the Lorain Journal ever experienced an operating loss?

A. Yes.

Q. Can you now remember the years when it did experience an operating loss?

A. I recall it was several years there was a considerable amount of loss.

Q. My question is, can you now remember when the considerable amount of loss was.

A. The early '30's.

Q. You experienced the loss when the Times-Herald and the Lorain Journal were independent of each other? Is that it?

[fol. 333] A. Yes, sir, large losses.

Q. Since purchase of the Times-Herald until and including the year 1946, isn't it the fact that you have had a profit each year, the Lorain Journal?

A. I can't recall the exact figures. I would say offhand there probably was a profit each year.

Q. Would you say in 1946 before WEOL was operated, The Lorain Journal enjoyed a quasi-monopoly?

Mr. Fulton: I object, if the court please.

The Court: Sustained.

Mr. Kramer: If the court please, I have reserved certain numbers for exhibits in between these, which have been marked up to yesterday, and I am about to show the witness what is marked Plaintiff's Exhibit 133.

Q. I hand you Plaintiff's Exhibit 133 and ask you to tell me if that is your signature that appears on the bottom of that exhibit.

A. (Witness examines exhibit.)

Q. The question is: Is that your signature? You may read the document, but the question is, is that your signature?

A. That is a photostatic copy of my signature.

Q. And what is the document?

A. A Waiver of notice of special meeting of Board of Directors.

[fol. 334] Q. Of the Lorain Journal Company?

A. The Lorain Journal Company.

Q. For December 9, 1946?

A. That is correct.

Mr. Kramer: I offer Government's Exhibit 133 in evidence.

Mr. Fulton: We object to the receipt of it in evidence.

The Court: On what ground?

Mr. Fulton: We object to the receipt of the entire exhibit because it contains information that we think is extremely confidential and ought not to become public property, and which is not at all necessary for the purposes of this case. If any of it at all is competent, of course, that portion which shows what it is, according to the subject at the head and the waiver clause, the attendance clause, but I think that the next paragraph with the amounts and everything, down to the second sentence in the last paragraph on that page which starts with the words, "The President stated that considering the events of the past"—that all refers to figures that appear then in the last three paragraphs on the second page, and all that ought to be eliminated for the same reason.

The Court: I have never known of an objection to evidence on the ground that it was confidential. I only know [fol. 335] of three possible confidential communications, and those are, between an attorney and client, between physician and patient, and between a minister and a member of his congregation.

Mr. Fulton: Well, stepping from the confidence into the realm that it is not confidence, it is not relevant and it is not material; only one part of it, if any is material to the issues in this case, and it starts with that sentence I mentioned.

The Court: I see one sentence down there in which they say they are in a quasi-monopoly position with respect to the newspaper, and that is the charge of the government, and here is an admission of it.

Mr. Fulton: I haven't excluded that. I was starting with the sentence that precedes that.

The Court: How are you going to cut it in half? Here

is a part of the corporate records of The Lorain Journal Company which is charged with violation of the Sherman Act. You are going to cut this in half: how do you propose to do it? I will exclude it if you show me how it can be done.

Mr. Fulton: If your Honor will permit me to refer to something that happened in this court room. I remember the trial of a case in which you and I were together; you were the United States Attorney and I was your assistant, and Judge West sat where you now sit, and that same ques-
[fol. 336] tion was raised. I remember I did make the remark that perhaps wasn't quite proper, when the Court asked the question your Honor now asked, I said we didn't have a scissors at hand to make the delineation. I think he said there could be some redrafting of the pertinent parts on another sheet of paper and have that offered in evidence, and I think that is what can be done here.

The Court: If it can be done without losing the sequence or the meaning, I have no objection. Otherwise I don't see how it can be done.

Mr. Fulton: All it takes is a piece of paper which will start in and copy the minutes, the second paragraph preceding the list of names and amounts, and then——

The Court: The bonuses.

Mr. Fulton: That is right.

Mr. Kramer: I have a suggestion here. May I not read the parts relevant and let the witness follow it to see if I have read it correctly?

Mr. Fulton: Surely, that is a good way to do it.

Mr. Kramer: We have no desire to reveal the infor-
[fol. 337] mation.

Mr. Fulton: With the understanding on the record I do object to any part of it being received in evidence.

The Court: Why? I want to know what the objection is.

Mr. Fulton: Well, I think even the statement your Honor allowed in is of no significance, although it is a statement apparently attributable to the defendants, that is the corporate defendants in this case.

The Court: Not "apparently" here are the corporate minutes.

Mr. Fulton: I say attributable to the corporation.

The Court: Attributable to a corporation, the minutes of which bear the signature of both the president and the treasurer of the company.

Mr. Fulton: When I say "apparently" I don't mean the corporation doesn't say this is what was discussed at the meeting but I do say that it contains language which constitutes, and I say it once again, a conclusion. It is a good deal like, for a very simple illustration, if my automobile [fol. 338] collides with somebody else's automobile and I get out and say, "Well, I am at fault". I think that statement of mine I am at fault, wholly apart from the res gestae, take that out of the picture, isn't admissible because it is a conclusion. Whether I am at fault or not is something the Court will later have to decide. If I said, "My brakes didn't hold", or "I didn't apply my brakes quickly enough", or "I didn't see well, I didn't have my right spectacles on" that would be different.

The Court: Do you contend a statement of defendant in a personal injury case who says, "I am not at fault" is not admissible?

Mr. Fulton: I have had it excluded.

The Court: That is not answering my question. I haven't any doubt you may have had it excluded. I haven't any doubt a lot of evidence is excluded that has been properly offered. I am not criticizing all my brethren, but they have different views of the law, and they are all subject to error, of course. I don't claim perfection but I don't know of [fol. 339] any rule of evidence that would possibly exclude it. I would have to be enlightened on it if there is. I have never known of any. When there is an admission made by a defendant in the very words in which he is charged with a violation of law, violation of the rights of another individual, that that isn't admissible. If there is, I would like to be told.

Mr. Fulton: I have never made the objection without having some support and I suppose I can find some case in Ohio on that subject. It is the same thing as the difference between one saying, "I shot a man," and saying "I murdered a man". I notice our police officers in taking statements are very careful not to have them say, "I murdered so and so". They have them say, "I shot him", to avoid any conclusion.

The Court: There, again, with due deference to police officers, I may have a different view of it. But I will permit that to go in subject, of course, to your showing me some law that it should be excluded. It will be received.

[fol. 340] Q. Now, Mr. Horvitz, in order to keep out of the record that portion of this exhibit which is irrelevant, I am going to read from the minutes of the special meeting of the Board of Directors of The Lorain Journal Company held at 913 Midland Building, Cleveland, Ohio, on December 9, 1946, at 3 o'clock p. m., and I am going to ask you when I am done to tell me whether I have accurately read the portion of those minutes. You understand me?

A. Yes.

Q. You are to follow me as I read and make sure I read it correctly. I am starting with the second sentence of the last paragraph that commences on Page 1 of these minutes, where it says: (Reading)

> "The president stated that, considering the events of the past, that consummation of the transaction which gave rise to the mortgage indebtedness was a fortunate move on the part of the officers and directors, that prior thereto the company, in the face of competition from another newspaper, had experienced very material operating losses, and that thereafter, with the elimination of competition, the company enjoyed a profitable operating experience. Though pres-[fol. 341] ently enjoying a quasi-monopolistic position with respect to the newspaper it is pertinent to consider that such may not always be the case, and that the company can always expect an attempt on the part of others to encroach upon its field of operation through establishment of a competing newspaper or other advertising medium, with resultant adverse effect on the company. In view of such an ever present contingency it is very essential that the company carefully husband its resources in order that it may at all times be in the same position to protect its interests."

Now, my question, Mr. Horvitz, is have I accurately read a portion of the minutes of that meeting?

A. You have.

[fol. 342] The Court: Do you have any objection to my having the entire minutes, Mr. Fulton——

Mr. Fulton: No.

The Court: —in my file here, or do you wish to have the stenographer make a copy of it for me?

Mr. Fulton: Oh, no.

The Court: I have no desire to see anything that I have ruled out, and if you feel it should be done that way, I would have the court reporter have a copy made to be filed with the exhibits.

Mr. Fulton: No, I would be perfectly happy and content to let you have all of it. I just didn't want the part that I thought ought not to be received become a matter of public information, that's all. It is all right for you to have the entire record of the minutes of that meeting.

The Court: This is an exhibit that goes in the file. What I wanted to find out is, in view of the fact that the Government has supplied me with carbon copies or photostats of exhibits that have been offered in this looseleaf [fol. 343] form, whether or not I may have another one in here, or do you wish me to have one from the court reporter's files in here?

Mr. Kramer: If the Court please, I would like to interrupt, in order to accommodate these gentlemen I am withdrawing Exhibit 133.

The Court: I fully appreciate that, Mr. Kramer.

Mr. Kramer: Excuse me, your Honor.

The Court: But after you gentlemen get through my duties are not at an end, and some of these exhibits have been offered and the Court has them and I will have to read them. I can't recall every word of it and I can't make notes of every word. That's why I want to know whether I may have a copy of it.

Mr. Kramer: I apoligize, your Honor. I think sometimes if you remind me of my failure to read as I go along, I might improve.

The Court: That's perfectly all right. This is the exhibit that has been offered.

Mr. Fulton: Now, if your Honor please, I move that there be stricken that part from the minutes which was [fol. 344] offered for the reasons that I have already stated, plus this additional reason. While there is ref-

erence there to former competition and the existence of a quasi-monopoly, the mere existence of a monopoly doesn't in and of itself, by any stretch of the imagination, indicate a violation of the Sherman Law. Monopolies may exist naturally, monopolies may be lawfully acquired, as stated by Judge Hand in the Aluminum Case, and as stated by Mr. Justice Douglas in one of the recent theater cases, I think it was, where three or four were decided together, and the Supreme Court in this particular one case, 334 U. S. 100 at Page 106 recognizes, for example, that situation by the statement that one might have a monopoly, that one who owns and operates a single theater in a town, and who acquires the exclusive right to exhibit a film, has a monopoly in the popular sense. He goes on then to say that monopolies in the popular sense do not in and of themselves *ipso* facto constitute a monopoly violative of the Sherman Law.

The Court: You are quite correct about that, Mr. Fulton. There isn't one statement that I can at the moment [fol. 345] think of that would in and of itself prove a case under the Sherman Act, but certainly various items of evidence which accumulated with others may prove a violation are admissible. I haven't said that this is an admission, and the Court would so find, as a result of it. Otherwise I would probably say this lawsuit is at an end. Well, it certainly is not. All I said to you is that it is one of the items of evidence which the Court will receive tending to prove the Government's case. That's all I have said, and I have no quarrel with your view of the law as stated by Judge Hand, and as stated by Justice Douglas. Of course it is true there are monopolies, there are numerous monopolies which are naturally enjoyed. There are cases of monopolies which have been recognized with certain limitations. There are communities in which there is one picture show, and in those instances, of course, it enjoys a monopoly. The question is whether or not that monopoly has been obtained as a result of the acts and activities of the parties, whether they caused such a monopoly to be created by shutting out competition and [fol. 346] by acquiring it. I have no dispute or no disagreement with what has been said, but statements of this nature certainly are admissible for the purpose that they may tend to prove the Government's case. Whether it

proves it or not remains to be seen after the conclusion of all of the evidence in this case. The motion will be overruled.

Mr. Fulton: Now, I think I can say with that exchange of views it won't be necessary for me to interrupt along that subject matter again.

Q. Looking at that exhibit, Mr. Horvitz, I will ask you, do you now regard or did you regard in December, 1946, any competitor as necessarily adverse to your interests?

A. The Lorain Sunday News was in existence at that time. They were a competitor.

Q. Will you please listen to the question I have asked and answer it directly?

Mr. Kramer: Will you please read the question to him?

(Question read by reporter.)

A. Yes.

Q. You refer in this exhibit, or in these minutes, to the [fol. 347] field of operations of the Lorain Journal. What do you mean by that, do you mean geographic or some other meaning?

A. May I ask where that is?

Q. The last full sentence on Page 1.

A. The field of operation is the publishing of the newspaper.

Q. Would you repeat that?

A. The field of operation is the publishing of a newspaper.

Q. The field of operation is the publishing of a newspaper?

A. Yes, sir.

Q. You notice it then goes on and says, "through establishment of competing newspapers or other advertising mediums." You regard a radio station as an advertising medium?

A. Yes.

Q. Thank you. Who purchased the Times Herald, that is, do you remember precisely who it was that purchased it?

A. In what year?

Q. That's a fair question, sir. I apologize. Who purchased it in 1932?

A. The Lorain Journal purchased it from Brush-Moore Newspapers.

Q. Are you sure of that?

A. That was the final consum-ation of the transaction, the [fol. 348] Lorain Journal made the purchase.

Q. I don't want to know about the final culmination. I want to know about that. Isn't it a fact that the Mansfield Journal also participated in the purchase?

A. No.

Q. You don't remember—you say no?

Mr. Fulton: He said no.

A. No, the Mansfield Journal had nothing to do with the Lorain Journal.

Q. Well, we will go into that. You say the Mansfield Journal did not participate in the purchase?

A. The Mansfield Journal did not participate in the purchase.

Q. Didn't Samuel Horvitz acting for himself and on behalf of the Lorain Journal also participate in the purchase of the Times Herald?

A. I said that the ultimate purchaser of the Lorain Times Herald was the Lorain Journal.

Q. I'm not asking you who ultimately got it, I am asking who participated in the purchase of it?

A. He negotiated the purchase, handled the purchase, for the Lorain Journal.

Q. Well, let's see if we can refresh your recollection.

Mr. Kramer: Here is the next exhibit.

[fol. 349] (Document marked by Clerk Plaintiff's Exhibit 135.)

Q. I hand you Plaintiff's Exhibit 135 and ask you to look at the last page thereof and tell me whose signatures you see on that document on the righthand side? (Handing document to witness.)

Mr. Kramer: If the Court please, I am sorry I have no copies of these documents because I promised I would not let them go out of the building until they were offered.

A. The signatures are William H. Vodrey acting for and on behalf of himself and also for and on behalf of the Lorain Times Herald owning and publishing the Lorain

Times Herald, and for and on behalf of the News Printing Company of Mansfield, Ohio, owning and publishing the Mansfield News, and the signature of S. A. Horvitz acting for and on behalf of himself and also for and on behalf of the Lorain Journal, Lorain, Ohio, owning and publishing the Lorain Journal, and the Mansfield Journal Company of Mansfield, Ohio, owning and publishing the Mansfield Journal.

Q. Thank you, sir. And this is a contract between Louis H. Brush, Roy D. Moore, William H. Vodrey and Samuel A. Horvitz?

A. Acting——

Q. In the capacities you have read?

[fol. 350] A. Yes, sir.

Mr. Kramer: I offer Plaintiff's Exhibit 135 in evidence, if the Court please.

Mr. Fulton: May I look at it for just a moment, please?

Mr. Kramer: Yes.

Mr. Fulton: I am objecting to the receipt of this but merely because it is not relevant or material, bearing as it does on a subject matter back in 1932, which I consider to be too remote from the transactions that ought to be the basis on which and probably are the basis of this lawsuit. It is the objection I made yesterday to which your Honor said, "But this complaint says for many years" more or less generally.

The Court: Unfortunately, it doesn't say for many years. If it said for many years it would be less difficult to decide. The complaint uses a very unusual phrase.

Mr. Kramer: Some years ago, your Honor.

The Court: Some years ago, which is a rather loose term. I don't know what it means. I don't know what some years ago means. I can only assume that by some years ago you meant during those years which are perti-

[fol. 351] nent to the complaint. Do you contend that this leads to other matters within the period during which the alleged violation occurred for which the Government is seeking a remedy here?

Mr. Kramer: That is correct, and there are other reasons, if I may be heard.

The Court: Yes.

Mr. Kramer: That Paragraph 18(a) of the complaint, as amended, states:

> "The aforesaid combinations and conspiracies consisted of a continuing concert of action among the defendants and others to the plaintiff unknown, the substantial terms of which have been from time to time, that the defendants undertake to acquire ownership of newspapers and radio broadcasting facilities in Lorain County, Ohio, which compete with defendant The Lorain Journal Company."

Paragraph 19(a) of the complaint, as amended, reads:

> "Pursuant to the aforesaid combination and conspiracies to restrain and to monopolize, and in an attempt to monopolize, the aforesaid trade and com- [fol. 352] merce, the defendants among other things have attempted to purchase the Elyria Chronicle-Telegram and the Elyria-Lorain Broadcasting Company."

So that there is nothing in the complaint which per se limits us in time. Now, had the defendants desired to know how far back we were going, there is a lawyer-like way of finding out, through the submission of interrogatories on the point. They did not. They fully knew that we were going back in either December or early January when we asked, or when we submitted a request under Rule 34 to inspect documents relating to the purchase of the Times Herald. They objected. I was anxious to avoid dispute and conflict, and I said we will reserve that for the trial. We did not get these documents until today. They then served interrogatories on us, but made no inquiry with respect to how far back we were going. The substantive points which this evidence is directed to are as follows: first, it tends to explain what is meant by the minutes which are already in evidence, the minutes that I read this morning; secondly, with respect to the objection that [fol. 353] they are too remote in time, I again point out that the complaint alleges, and the evidence shows that the Chronicle-Telegram has been published in Elyria for many years, and that by reason of the conspiracy relating to it, that is, also the attempt to purchase the Chronicle-Telegram, and the circulation and advertising policies of

the two papers has been in effect a long time, which were specifically put in issue by the complaint. The defendants' other objection, as I understand it, is that—I don't mean this facetiously, but as I understood their objection, it was the contention that if a conspiracy is of such long standing as twenty odd years, it could not be proceeded against under the Sherman Act.

The Court: Well, I don't believe that is his contention at all, Mr. Kramer. I think his contention is that the conspiracy as here charged does not appear to be of such long duration, from the wording of the complaint. Now, that is the objection they have made, and I don't think it is made on the ground that a conspiracy of long standing [fol. 354] cannot be proceeded against.

Mr. Kramer: If the Court please, we are attempting to prove what happened in an alleged attempt to monopolize and in an alleged conspiracy to monopolize and a conspiracy to restrain. As I understand it, the only ground upon which he can object to the evidence, if it tends to show that, or if it may tend to show that, is on the ground of surprise, and I am stating to your Honor that he cannot claim surprise. We informed him in either late December or early January.

The Court: I am going to permit it to come in. It shows the back-drop against which these things have occurred. I don't know what value it would have at this stage.

Mr. Kramer: You mean until you have heard——

The Court: Until I have heard all the evidence. I will receive it for that reason, and this not being a jury case, I will say to counsel that if it should appear to the Court that the evidence as developed by the Government is of a nature which should be limited to a period fairly recent [fol. 355] to the time of trial or the date of the judgment, then I will exclude it. I receive it now for the sole purpose, as I say, to show the back-drop against which these occurrences have taken place. I cannot see any great materiality at the moment.

Mr. Kramer: I intend to bring out the materiality.

The Court: I say at the moment. If it can be shown I am perfectly willing to receive it.

(Thereupon a recess was taken.)

Mr. Kramer: If the Court please, I offer Government's Exhibit 135 in evidence.

The Court: It may be received.

Mr. Kramer: And I want to read to the Court two paragraphs only from that contract as having a bearing on this. If you have anything else you would like to read, you may.

Mr. Fulton: If the Court please, I should like to substitute copies.

Mr. Kramer: Photostatic copies?

Mr. Fulton: Photostatic copies for these originals which we do not have copies of. We can make some arrange-[fol. 356] ment about making photostats.

Mr. Kramer: Just so it is understood the Government will not do the photostating, because I do not want to take the risk of having these valuable documents out of the building.

Mr. Fulton: Well, the Court can grant us permission to have it done, or we can ask the Clerk to have them photostated.

Mr. Kramer: No objection.

"Contract between Louis H. Brush, Roy D. Moore, William H. Vodrey, and Samuel A. Horvitz.

This contract made and negotiated at Cleveland, Ohio, on and as of the 5th day of December, A. D. 1932, by and between Louis H. Brush, Roy D. Moore and William H. Vodrey, individually, of the cities of Salem, Elyria, and East Liverpool, Ohio, acting for and on behalf of themselves and also for and on behalf of The Lorain Times Herald Company owning and publishing the Lorain Times Herald, and for and on behalf of the News Printing Company of Mansfield, Ohio, owning and publishing the Mansfield News, hereinafter sometimes known and designated as the first [fol. 357] parties, and Samuel A. Horvitz of Cleveland, Ohio, acting for and on behalf of himself, and also for and on behalf of The Lorain Journal Company of Lorain, Ohio, owning and publishing the Lorain Journal, and the Mansfield Journal Company of Mansfield, Ohio, owning and publishing the Mansfield Journal, hereinafter sometimes known and designated as the second party."

Q. Mr. Horvitz, doesn't that refresh your recollection that the Mansfield Journal did participate in the deal by which these two papers were acquired?

A. That wasn't the question you asked me.

Q. What was my confusion?

A. As I recall the question, you asked me whether the Mansfield Journal Company didn't buy into the Lorain Times Herald.

Q. If I confused you or made a mistake, I apologize. Let's start all over. Isn't it a fact that there was a single-package deal, that you bought at the same time and pursuant to the same contracts, both the Lorain Times Herald and the Mansfield News? Isn't that a fact?

A. The Mansfield Journal Company and the Lorain Journal Company acquired the Mansfield News and the Lorain Times Herald.

[fol. 358] Q. At the same time?

A. Under subsequent contracts.

The Court: Under what?

The Witness: Under the subsequent contracts which followed these papers.

The Court: Which followed this one?

The Witness: Yes.

Mr. Kramer: We will get into that, your Honor.

"Sec. 2. That whereas there are two competitive newspapers published in both Mansfield and Lorain, Ohio, the Mansfield News being owned and published by the News Printing Company, and the Lorain Times-Herald being owned and published by the Lorain Times-Herald Company, and the Mansfield Journal being owned and published by the Mansfield Journal Company, and the Lorain Journal being owned and published by the Lorain Journal Company; and whereas, the publication of said two competitive newspapers in both Lorain and Mansfield is highly expensive and can only be done at a loss to the owners of such newspapers, now, therefore in order to eliminate such loss and permit of a possibility of a profit, said first parties [fol. 359] and second party for and in consideration of the sum of $10.00 paid by each party to this contract to every other party to this contract and for other good and valuable consideration herein expressed and

named, the receipt of which is hereby acknowledged, said first parties and second party hereby mutually represent, promise, understand, covenant, and agree each to and with the other and each for himself as follows:''

That's all I care to read from this, if the Court please. [fol. 360] Q. I now show you what purports to be the minute book of The Lorain Journal Company. I show you the entry of the minutes of a special meeting of the directors of the Lorain Journal Company held in the office of the company on Friday, December 16, 1932, at 2:00 o'clock P. M., and I show you the last page of those minutes and ask you whether or not that is your signature as Secretary.

A. It is.
Q. And Samuel Horvitz as President?
A. S. A. Horvitz.
Q. S. A. Horvitz as President?
A. Yes, sir.

Mr. Kramer: If the court please, I offer these minutes in evidence.

Mr. Fulton: Just that one meeting?

Mr. Kramer: Just that one meeting. I apologize to the Court, I haven't even had it marked by the clerk.

(Minutes referred to were thereupon marked by the clerk Plaintiff's Exhibit 136.)

Mr. Kramer: I offer Plaintiff's Exhibit 136 in evidence, if the court please. I am only interested in the resolutions, the action taken at that meeting. Counsel apparently has some feeling that the entire minutes would be irrelevant. I don't care to argue the point; I am perfectly willing again, if it conforms with your Honor's wishes, to read into the record the portion of the minutes which I am [fol. 361] interested in.

The Court: Have you shown it to counsel?

Mr. Kramer: Yes, I have.

Mr. Fulton: I still object to that part for the same reasons that I objected to the previous offer.

The Court: Because of the dates?

Mr. Fulton: Because of the date.

The Court: I will permit that to be read under the same ruling and under the same conditions.

Mr. Fulton: I might state, to save time, that we might let the record show that I do object to anything that is offered in evidence here, any documents prior to 1946.

The Court: The record may so show.

Mr. Fulton: That may be a little later than I intended to say, but it will save a lot of objections from here on.

Mr. Kramer: Prior to what year?

Mr. Fulton: 1946.

The Court: The objection will be overruled.

Mr. Fulton: This is Exhibit 136?

The Court: I understand he is withdrawing it as an exhibit and is simply going to read from the corporate minutes.

[fol. 362] Mr. Kramer: That is correct, your Honor.

> "Resolved, that the President and Secretary of this company be and they hereby are authorized and directed to sign a certain contract for the purchase of the Lorain Times-Herald and the Mansfield News, all as set forth in a draft of the contract presented to the meeting and that the President be further authorized to consent to and approve such modifications or amendments to the contract as may be mutually agreed upon between the vendors thereunder and the President of this Company.
>
> On motion duly made, seconded and approved by the affirmative votes of all of the directors of the company, it was
>
> Resolved, that the President and Secretary be and they are hereby authorized and empowered to enter into a contract with the Mansfield Journal Company whereby in consideration of said company's joining in the execution of such contract, this company would agree to be and become liable for both principal and interest on $300,000.00 of the $800,000.00 purchase price provided in said agreement on condition that there be transferred to this company all of the business and assets of the Lorain Times-Herald Company, as provided for in the contract, and whereby the balance of such purchase price, namely, $500,000.00, would be assumed, both as to principal and interest, by Mans-

[fol. 363] field Journal Company, upon transfer to it of all of the business and assets of The News Printing Company, as provided in the contract; said contract further to provide that in case this company shall at any time advance either in interest or principal more than its proportionate share of the $800,000.00 obligation assumed jointly with Mansfield Journal Company, said Mansfield Journal Company would agree on demand to repy any such amount with interest thereon at the rate of six per cent per annum from the date of such advancement to the date of repayment and to provide in case Mansfield Journal Company at any time is required to advance more than its proportionate share either of interest or principal of such joint purchase price, this company would undertake to and agree to repay any such advances, either of interest or principal, with interest thereon at the rate of six per cent per annum from the date of such advancement to the date of repayment.''

Q. So it is a fact, isn't it, Mr. Horvitz, that the Mansfield Journal participated in a single transaction with the Lorain Journal under the terms of which, in part, the Lorain Journal acquired the Times-Herald?

A. The Lorain Journal acquired the Lorain Times-Herald.

Q. Is your answer yes or no to my question.

[fol. 364] A. Yes.

Q. Do you remember that Samuel A. Horvitz as an individual personally guaranteed the payment of the notes?

A. I don't recall it.

Mr. Kramer: We have had marked as Exhibit 136 this document in place of the minutes which were withdrawn as Exhibit 136, your Honor.

Q. I will ask you to look at Government's Exhibit 136 and ask you to tell me whether or not Samuel A. Horvitz did not sign this contract, whether it is not a fact he signed this contract as President of The Lorain Journal Company as President of the Mansfield Journal Company, and acting for himself?

A. It looks like his signature.

Mr. Kramer: I offer Government's Exhibit 136 in evidence, if the court please.

A. This agreement is also signed by the Lorain Times-Herald by Louis D. Brush, President, The News Printing Company, Louis H. Brush, President, by Louis H. Brush, Roy D. Moore, and William H. Vodrey, individually. That's the culmination of the first agreement.

The Court: It may be received.

Mr. Kramer: If the court please, I am offering Government's Exhibit 136 primarily to demonstrate that Samuel A. Horvitz participated in this deal not only on behalf of the Lorain Journal but as an individual acting on behalf [fol. 365] of himself. The contract so shows.

Q. Do you now remember, Mr. Horvitz, that your brother, Samuel A. Horvitz, did personally guarantee the notes?

A. I don't recall it.

Mr. Kramer: Please mark this document as our next exhibit.

(Document marked by clerk Plaintiff's Exhibit 138.)

Q. I hand you Plaintiff's Exhibit 138 and ask you to tell me whose signature is on that agreement, if you know.

A. The Lorain Times-Herald, the New Printing Company, Louis H. Brush, Roy D. Moore, William H. Vodrey, by William H. Vodrey, their counsel, first parties and S. A. Horvitz, second party.

Mr. Kramer: I offer that in evidence, your Honor. It is a memorandum of agreement labeled "Guarantee". That's Government's Exhibit 138.

The Court: It may be received.

Mr. Kramer: It shows Samuel Horvitz personally guaranteed the notes.

Q. Now, Mr. Horvitz, I hand you Government's Exhibit 137 and I ask you to tell me whether or not you see your own signature and that of Samuel Horvitz on the last page of the exhibit?

A. Yes.

Q. Now look at the front page of the exhibit and tell me whether or not that isn't the contract itself by which [fol. 366] the Lorain Times-Herald Company, The News Printing Company, Louis H. Brush, Roy D. Moore, and William H. Vodrey, on the one side, and the Lorain Journal

Company, Mansfield Journal Company, and S. H. Horvitz, on the other side, made an arrangement by which the Lorain Journal and the Mansfield Journal and S. A. Horvitz purchased the assets of the Times-Herald in Lorain, and the Mansfield News in Mansfield?

A. That is that contract.

The Court: What is the answer?

The Witness: That is the contract.

Mr. Kramer: I offer Government's Exhibit 137 in evidence.

The Court: It may be received.

Q. Now, Mr. Horvitz, do you remember that you filed an affidavit in this case on the motion for preliminary injunction?

A. Yes.

Q. To the best of your present knowledge, everything you said in that affidavit was true, wasn't it?

A. As far as I know.

Q. If you made any misstatements, they were unintentional: is that right?

A. I don't know that I made any.

Q. All right. Have you participated in the formulation and carrying out of the advertising policy of the Lorain Journal?

[fol. 367] A. I have been in on some of the discussion, but mostly that has been handled by the publisher.

Q. Are you able to answer the question yes or no?

A. Yes, I have been in on some of them.

Q. Have you participated in the formulation and carrying out of the advertising policy of the Lorain Journal?

A. Yes.

Q. Thank you. Did you read the affidavit of your brother prior to the time that it was filed in this case?

A. I don't get that question. Prior to what time? Prior to the time it was made, or prior to the time it was filed?

Q. Prior to the time it was filed.

A. I saw it after it was made, yes.

Q. After it was made but before it was filed?

A. Yes, sir.

Q. Did you read it?

A. Yes.

Q. Did you agree with everything he said as to the advertising policy of the Lorain Journal?

A. Yes.

Q. Well, now, Samuel A. Horvitz, in his affidavit, you will observe, stated on the last page of his affidavit, "To my best knowledge and belief, numerous other newspapers are circulated and sold in the City of Lorain, and that the Lorain Journal Company has aided the circulation of cer-
[fol. 368] tain other newspapers." Do you remember that?

A. Yes.

Q. What are the names of other newspapers whose circulation you have aided?

A. The Chicago Tribune, Youngstown Vindicator, and several other papers who advertised in the Lorain Journal.

Q. The Youngstown what?

A. Youngstown Vindicator, Chicago Tribune, and there are several other newspapers who advertise in the Lorain Journal.

The Court: Advertise in?

The Witness: Advertise in the Lorain Journal to sell their papers in Lorain.

Q. You don't remember any other newspapers besides those two whose circulation you have aided?

A. I recall the Cleveland News and Cleveland Press.

Q. Did you say a while back that you considered the Cleveland papers that circulated in Lorain your competitors?

A. As far as news, yes.

Q. As far as news?

A. Yes.

Q. You don't consider them your competitors in advertising; is that it?

A. They don't solicit Lorain advertising and we don't solicit Cleveland advertising.

[fol. 369] Q. Now, Mr. Horvitz, what I was trying to get at way back there is just that. It is a fact, then, isn't it, that the Cleveland News and the Cleveland Press and the Cleveland Plain Dealer are not competitors of yours in the solicitation of advertising?

A. In Lorain, no.

Q. In Lorain, in the City of Lorain.

A. They are direct competitors of ours as a newspaper.

A newspaper consists of news and advertising. They try to sell their paper in Lorain and we try to sell the Lorain Journal in Lorain. As far as any direct amount of advertising appearing in the Cleveland papers of Lorain merchants, I don't think I have ever seen any and I don't think they solicit any. They do solicit national advertising and we solicit national advertising. They are direct competitors as far as national advertising is concerned.

Q. Isn't it a fact that the Cleveland Plain Dealer prints advertisements of merchants in Cleveland——

Mr. Kramer: Strike that out.

Q. Isn't it a fact that all three Cleveland newspapers print advertisements of merchants in Cleveland who offer similar goods for sale, and which are offered for sale in Lorain by local Lorain merchants?

A. What type of merchants are you referring to?

[fol. 370] Q. Department stores, for example.

A. I don't quite get that. I don't understand it.

Q. Isn't it a fact that the Cleveland newspapers advertise for sale in stores in Cleveland the same kind of merchandise in part that are also offered for sale in stores in Lorain?

A. That is correct.

Q. And you regard it to be consistent with your policy not to build up the Elyria market, which is what your brother said was his defense in this affidavit, to help the two Cleveland papers build up the newspaper market by running advertisements in their papers that would take business away from merchants of this community?

A. What is the question? I don't understand.

Q. I say do you think it is consistent or inconsistent? Was your brother mistaken in his affidavit when he said the policy of the Lorain Journal was—would you like to see his affidavit?

A. I would like to see it.

Mr. Fulton: I will object to the question, if the court please, as being argumentative.

The Court: I would suggest that the witness answer questions until objections are made by counsel. This question is argumentative, and the objection will be sustained.

[fol. 371] Q. Isn't it a fact, Mr. Horvitz, that your

brother stated in his affidavit, "Based upon the belief that a strong, healthy business and shopping district is important to the well-being and continued growth and development of the community, and that anything that tends to impair the community's business is detrimental to that community, it is the policy of the Lorain Journal to protect the Lorain market in the interest of local business houses. To accomplish this the Lorain Journal strives to build up the Lorain market by encouraging patrons of local stores, by attempting to attract business into the Lorain market and by rejecting the advertisements of out of town establishments that would tend to withdraw business from the Lorain market."

A. That is true.

Q. Now my question is, didn't you just get through telling me that you used—I don't want to put words in your mouth, I believe you said you accepted advertisements for the Cleveland News and Cleveland Press?

A. I didn't say we accepted advertising.

Q. You said you aided their circulation?

A. Yes.

Q. Now I am asking you, do you not think that the circulation of those two newspapers in Lorain tends to encourage people to purchase goods and merchandise adver- [fol. 372] tised for sale in those two newspapers?

A. No; there always will be a certain number of Cleveland papers distributed in Lorain, and you can't stop it.

Q. You say you can't stop it?

A. No.

Q. But would you like to?

A. I don't care how much sales effort you put out, there are a certain number of people in the community that want to read the Cleveland papers, and you can't talk them out of it.

Q. Well, that's your position? You don't want to change it? That you did help these Cleveland papers and assisted them, you aided in the circulation of the Cleveland newspapers that you mentioned?

A. The Cleveland News and the Cleveland Press have a certain circulation in Lorain. They come on trucks and they deliver them to their local distributor. All we do is take those bundles and put them on our trucks and take

them out to the outlying sections where they are picked up by someone. That's what I consider aiding circulation.

Q. You actually distribute the two Cleveland papers?

A. No, we don't distribute them: we deliver them.

Q. From where?

A. From where they receive the papers to where their people are, their men will deliver them to downtown [fol. 373] Lorain, and we just carry the bundle on our truck on its regular trip to the outlying section where the Cleveland Press and News are to go.

Q. Where do you get them?

A. From the distributor of the Cleveland Press or Cleveland News in downtown Loraiin.

Q. And you take them to the outlying districts?

A. We take them to the outlyinig districts on the regular trip of our truck and we dump them off and they take care of them themselves.

The Court: That's the Press and News?

The Witness: Yes.

Q. You don't do that for the Plain Dealer?

A. We have never received any request from the Plain Dealer.

Q. Is it or is it not true, if you know, that the Lorain Journal, as a matter of policy, refuses or declines to publish in the Lorain Journal advertisements by merchants in Lorain who advertise over radio station WEOL or WEOL-FM?

A. No; I wouldn't say that it was true in that wording.

Q. You wouldn't say it was true in that wording?

A. Yes.

Q. Would you want to hear it over again?

A. Yes.

[fol. 374] (Question read by reporter.)

A. That in itself is not true.

Q. I am sorry?

A. No, that is not correct.

Q. In your affidavit, is it not a fact that you said as follows: "The Lorain Journal Company and its employees have and do present to the merchants and business men of Lorain arguments relative to the benefits of advertising

in the Lorain Journal and have on occasions invited comparison of benefits of advertising in that newspaper with the benefits of advertising in other organs or instrumentalities serving Lorain and vicinity''. My question is, isn't that accurately read?

A. I made that statement.

Q. What are the other organs and instrumentalities serving Lorain and vicinity to which you had reference in that statement?

A. The Lorain Sunday News—do you want me to explain that sentence? I can do it very readily.

Q. I want to first find out what they are.

A. Let me read it again.

Q. I want to know what the other organs or instrumentalities are.

A. The Lorain News, the Elyria radio station.

Q. Any others?

A. I don't recall now.

Q. I notice you call the radio station WEOL and WEOL-FM the Elyria radio station. Why do you insist upon [fol. 375] calling it the Elyria station?

A. Its license was granted originally for its main studio and its operation in Elyria, and there is no other Elyria radio station. The fact that it uses the call letters WEOL doesn't necessarily mean Lorain or Oberlin, doesn't necessarily make it an Oberlin or Lorain station. As far as the Lorain coverage is concerned, we don't consider it covers Lorain, because they talk about a studio in Lorain which really isn't a studio.

Q. You were here, were you not, when Mr. Ammel was on the stand, throughout his testimony?

A. Yes.

Q. And you were here when I offered and there was introduced in evidence Government's Exhibit 1, were you not? I will show it to you. Government's Exhibit 1, Mr. Horvitz shows the application of the Elyria-Lorain Broadcasting Company and two other companies for construction permits, and I offered it and it was received in evidence. Paragraph 6 of the conclusions reads in part as follows: ''It is apparent from the foregoing, and the Commission finds, that a grant of the applications of both the Elyria-Lorain Broadcasting Company and the Michigan

Broadcasting Company, would achieve the following results: (a) provide a new local broadcast station to Elyria, [fol. 376] Ohio, a city with a population of approximately 25,000, which is at present totally without local broadcast facilities, and an additional primary service to Lorain, Ohio, a city with a population in excess of 44,000, which is also without a local broadcast station.'' Do you [fol. 377] disagree with the Federal Communications Commission?

Mr. Fulton: I object to that.
The Court: Sustained.

Q. Do you remember a while back, Mr. Horvitz, that you said you wanted to explain some statements you made in your affidavit?

A. Yes.

Q. Well, before you explain it, let me get this straight. The other organs or instrumentalities to which you referred to in that affidavit were so far as you can now remember the Lorain Sunday News, and what you call the Elyria radio stations; is that right?

A. That's right.

Q. And you don't remember now any more?
A. Right now I don't recall any others.

Q. All right, now, make your explanation, please.

A. (Reading) ''The Lorain Journal Company and its employees have and do present to the business merchants of Lorain arguments relative to the benefits of advertising in the Lorain Journal and have on occasion invited comparison of benefits of advertising in that newspaper to the benefits of advertising through other organs or instrumentalities serving Lorain and vicinity.''

The publisher of the Lorain Sunday News testified here [fol. 378] yesterday that they have a circulation of less than three thousand. In fact, their last Audit Bureau Report shows them around 2500 or 2600, and he testified that he has a rate of 60 or 65 cents for local advertising. On the basis of that we sell to our advertisers and merchants in Lorain that we have over seven and a half times as much circulation as the Sunday News and that our rate is only about 50 per cent higher. So that a man spending a dollar with the Sunday News is equivalent of about 30 or 35 cents

of advertising compared with the Journal. It is a strictly business proposition to tell the merchant if he wants to spend that dollar he gets his money for it. I still maintain it is a selling proposition against our competition that they are paying three or four times more for advertising in the Sunday News than they do for advertising in the Lorain Journal.

Q. I understand then it is your position that you never told and that nobody in the Lorain Journal ever told any advertiser in your newspaper if he advertised over the radio station, or if he continued to advertise over the radio station he would be cut off from the Journal?

A. I never told anybody that.

Q. Now, do you know of anyone in your organization who told anyone that?

A. I don't recall of anybody ever saying that.

[fol. 379] Q. You don't recall, and you don't recall that you told or that anyone acting on behalf of the Lorain Journal of whom you are aware told Sears Roebuck they would have to get out of the Lorain Sunday News or have their contract for advertising in the Journal cancelled?

A. I never told them.

Mr. Fulton: I object to that question. I think this question is clearly argumentative, an argument between the witness and counsel, or counsel and the witness it should be, the other way around, between counsel and the witness. He is arguing with him about what somebody else may or may not have done.

The Court: I don't see anything argumentative about it. He is asking whether he is aware that anybody did say that. He may answer.

A. I don't recall anybody saying that.

Q. Do you know of anyone in your paper, in your offices, who told Sears-Roebuck that their contract would not be renewed in the Lorain Journal if they did not drop the Sunday News?

A. I don't know of any such thing.

Mr. Kramer: If the Court please, I find I forgot to ask one question regarding the Times Herald at the time I [fol. 380] was examining the witness on that. I would like to return to that one question.

Q. Do you not recollect, Mr. Horvitz, that most of the part of the purchase price that the Lorain Journal, the Mansfield Journal and Samuel A. Horvitz paid for the Times Herald and the Mansfield News was allocated to that value represented by the fact that the purchasing of the paper would eliminate the competition of the Lorain Times Herald with the Lorain Journal in Lorain?

A. That is a long question. I didn't follow it.

Q. I will make it easier. (Showing paper to witness.)

A. You want me to read this?

Mr. Fulton: I would like to have the question read back.

Mr. Kramer: Would the reporter read it back?

(Question read by reporter.)

Mr. Fulton: Do you understand the question?

The Witness: Not in that language, I can't answer. I can answer by reading what it says here.

Mr. Kramer: I had hoped to avoid that because your counsel has sometimes objected to that.

[fol. 381] Is there anything in this you don't want read other than the part subject to your general objection?

Q. Let me ask you this: isn't it a fact you bought the paper to get rid of the competition of the Times Herald?

A. No, that isn't true.

Q. That isn't true. Then we will introduce this.

Mr. Fulton: Your Honor, I will object to the page of the minutes—I know what you have in mind—even that paragraph.

Mr. Kramer: May I show the Minute Book to your Honor. (Handing to the Court.)

Mr. Fulton: And therefore to the question that is put to this witness, predicated on it.

Mr. Kramer: The entire minute in that book is what I am after.

(Page of Minute Book marked Plaintiff's Exhibit 139.)

Q. I show you Plaintiff's Exhibit 139 and ask you to tell me who the signers were appearing on it?

A. S. A. Horvitz, I. Horvitz.

Q. Plaintiff's Exhibit 139 is minutes of a special meeting of the directors of the Lorain Journal in your office of the company on Friday, February 24, 1933, is it not?

[fol. 382] A. Yes.

Mr. Kramer: I offer Exhibit 139 in evidence.

Mr. Fulton: I object.

The Court: What is the objection?

Mr. Fulton: The objection is, in addition to the previous objection on dates, the purpose of course is to show a certain amount of the purchase price was allocated on the basis of the non-competitive agreement. Now, of course, before we ever had any such thing as the Sherman Law, the common law recognized the branch of the law dealing with monopoly and restraint of trade, and it recognized the right in contracts, especially in contracts of purchase the seller would agree—the terms being reasonable as to time and geography—agree to non-competition in the future, and such agreements are valid. In view of that state of the law I don't see how that can bear in the least on our problem here.

The Court: Of course you are referring primarily to the Addystone Pipe Case, but I repeat again, that in a very [fol. 383] lengthly case that one single item in and of itself may not constitute a violation of the Sherman Anti-trust Act but the accumulation of several acts taken together may constitute such violation.

I readily appreciate the Government cannot present all its evidence at one time, and they present this as one of the items, as proposing to show competition is eliminated. This contract in and of itself may not be a violation of the Sherman Act, under the Addystone Pipe case, but whether or not this together with all the other activities does or does not or do or do not constitute a violation of the Act is to be determined after all the evidence is presented.

I will receive it.

Mr. Kramer: I would like to read this minute.

(Minutes of meeting read as follows:)

[fol. 384] Minutes of a Special Meeting of the Directors of The Lorain Journal Company held at the office of the Company, on Friday, February 24, 1933

Pursuant to the call of the President, Directors of the Lorain Journal Company met on Friday, February 24, 1933, at 2:00 o'clock P. M.

On motion duly made, seconded and approved by the affirmative vote of the directors of the Company, it was—

Resolved that in accordance with agreement with the Mansfield Journal Company that $300,000.00 of

the $800,000.00 shall be considered a direct liability of this company and the remainder, namely $500,000.00 to be considered a direct liability of the Mansfield Journal Company.

It was further resolved that the Board of Directors have carefully considered and examined the assets acquired from the Lorain Times-Herald and it is their judgment the following valuations shall be placed on the books for such assets:

Supplies	$ 650.95
Autos and Trucks	325.00
Cores	80.23
Paper	1,759.92
Ink	86.62
Metal	1,444.00
Type	15.00
Press	30,000.00
Furniture and Fixtures	1,301.95
Plant Equipment	32,815.00
Insurance Accounts Receivable	597.71
Contract with the proprietors of The Lorain Times-Herald to refrain from competing or entering into any competitive newspaper enterprise in the territory of The Lorain Journal Company for a period of five years from Dec. 17, 1932	230,923.62
	$300,000.00

It was further resolved that the action of the President and Treasurer in the issuing of a five year note to David Gibson to replace the several notes held by him, in the amount of $261,900.00, be approved.

On motion, duly seconded, the meeting adjourned.

S. A. Horvitz
President

I. Horvitz
Secretary

[fol. 385] Mr. Kramer: If the Court please, I have two witnesses from out of town, Columbus and Dayton, whom I would like to put in after the noon recess before continu-

ing with Mr. Horvitz. Unless my associate has one more question I think I would like to stop at this point.

Mr. Fulton: One was Mr. Smith Davis?

Mr. Kramer: No, I have let Mr. Smith Davis go without calling him. I didn't say who they were.

Q. Now one more question. I call your attention to Government's Exhibit 137, which is in evidence, and this is a contract which you signed, isn't it?

A. I was one of the signatories on that contract.

Mr. Kramer: I want to call the Court's attention to Paragraph 9 of the contract:

> "Said vendors shall not, directly or indirectly, engage in the newspaper business in the counties of Lorain or Richland, Ohio, for a period of five years from the date hereof; said vendors shall not, directly or indirectly, individually, or in connection with any partnership or corporation or as a lender of money or credit to an individual, partnership or corporation, [fol. 386] come into competition with said purchasers or their assignees, in said counties of Lorain or Richland, Ohio, during said period; and said vendors shall not, in any manner interfere with the business, trade, good will or customers of said purchasers or their assignees in said counties of Lorain and Richland, Ohio, during said period."

The Court: Now, you don't contend that agreement itself is a violation of the law?

Mr. Kramer: I most certainly do not.

This is one of a long, I hope not too long, series of evidence.

The Court: I assumed that in the previous ruling, it wasn't so intended, because of Mr. Fulton's comment of the law having recognized certain practices under the common law. Of course, they were very definitely and distinctly set forth in the Addystone Pipe case, which has been quoted and re-quoted, which sets forth the law as it now is in respect of certain types of contracts which may constitute restraint of trade and which may not be violations of law.

Mr. Kramer: I want to make it absolutely clear on the record, standing alone, this contract we do not contend

[fol. 387] is unlawful. We do contend, however, and I am confident I will be able to convince the Court from all the evidence before the case is over, this was the start, the mere start of the attempt to monopolize and the conspiracy to monopolize.

May we recess now?

The Court: The Bailiff may adjourn court until two o'clock.

(Noon recess taken.)

[fol. 388] FRIDAY, MARCH 3, 1950, 2 O'CLOCK P. M.

JOSEPH KELLY, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Joseph Kelly.

By Mr. Kramer:

Q. State your name, please.
A. Joseph Kelly.
Q. What is your address?
A. 40 Plumwood Road, Dayton, Ohio.
Q. Where and by whom are you employed?
A. Radio Station WONE Dayton, Ohio.
Q. Were you ever employed by the Lorain Journal?
A. I was.
Q. During what priod?
A. From February 1, 1948 until January 18, 1949.
Q. Were you fired by the Journal or did you leave voluntarily?
A. I was fired.
Q. What was your position with the Lorain Journal?
A. Classified advertising manager.
Q. I'm sorry.
A. Classified advertising manager.
Q. You were classified advertising manager?
[fol. 389] A. Yes, sir.
Q. Do you know Mr. D. P. Self?
A. I do.

Q. Was he with the Journal while you were there?
A. He was.
Q. What position did he hold with the Journal?
A. I believe his title was business manager.
Q. Did you ever have any conversation with Mr. Self regarding acceptance or rejection of classified advertising matter submitted by the Lorain Sunday News?
A. I did.
Q. Where were you when you had these conversations?
A. In the Lorain Journal office on 7th Street.
Q. In Lorain, Ohio?
A. That is right.
Q. Do you remember approximately when you had the conversation?
A. No, I can't recall.
Q. Do you remember the year?
A. Well, it was in 1948.
Q. Can you put it any closer than that?
A. It seems to me as though it was, I believe the first instance was probably in the late summer of 1948.
Q. Was anyone else present when you had this conversation who was able to hear it?
[fol. 390] A. You mean about the Lorain Sunday News?
Q. That's right.
A. Well, I don't recall whether they could have heard it or not, whether they were that close, but other employees were in the newspaper office. But the conversation was directed to me.
Q. Please state the nature of the conversation, telling us what your present best recollection is, what was said by Mr. Self?
A. Well, as I recall, the Lorain Sunday News presented some help wanted advertising——
Q. Presented what, sir?
A. Some help wanted advertising in the Lorain Journal. I didn't see the advertising myself and Mr. Self called my attention to it and requested that it be taken out, and which I followed instructions.
Q. You took it out of what?
A. The classified advertising section.
Q. So that it never appeared?
A. It appeared.

Q. It did appear?

A. It did appear once or perhaps twice, and the reason I did not recognize it was because it was under a street address and did not have the Lorain Sunday News name in it.

Q. Who discovered that, Mr. Self or you?

[fol. 391] A. I was told—apparently it wasn't me, because I was told about it.

Q. When you say it ran once or twice, you mean on one or two days?

A. That's right.

Q. Do you recall any occasion when the Lorain Journal printed a classified advertisement of the Lorain Sunday News for one edition or part of an edition and took it out while the edition was still running on the press?

A. I have a hazy recollection, but it is a recollection only, so I don't know whether the press was stopped, whether the plate was chipped, but I know that at the time I was there there was only one edition of the Lorain Journal every day, and it was pretty hard to yank it between editions because it didn't exist. It is my recollection and I believe the form was pulled back and remade.

Q. The form?

A. Yes.

Q. You mean the plate?

A. The type plate.

Q. Did Mr. Self tell you the reasons why he didn't want to run that ad?

A. I don't recall just what his absolute phrasing was, but I was led to believe it was just——

[fol. 392] Mr. Fulton: I object, your Honor please.

The Court: Sustained.

Q. You cannot tell us what you were led to believe, sir. You can only state what was said.

A. I can't recall the exact phrasing, but I was told that for competitive reasons——

Mr. Fulton: Now, if your Honor please, I ask that the witness be instructed to tell what was said to him.

The Court: Well, if he can, the exact words. If he cannot recall the exact words he may state the substance.

Mr. Fulton: I realize that. I don't want him to state it verbatim. I don't suggest that.

The Court: Can you tell us the substance of the conversation?

The Witness: Well, because——

The Court: No, can you tell us the substance, yes or no?

The Witness: Well, I'll say the exact substance, no, the absolute words.

The Court: You can't say it in exact words, but you can tell us the substance of the conversation?

[fol. 393] A. Well, it wasn't run in the Lorain Journal because they just didn't want to promote the other newspaper, use any manner or means of promoting the other newspaper. That's what I got from it.

Q. Calling your attention to the period of September, 1948, I ask you if you had any conversation with Mr. Self regarding the policy of the Lorain Journal with respect to those of its advertisers who also advertised over Radio Station WEOL?

A. I did.

Q. Where were the conversations held, please, sir?

A. The Lorain Journal office, Lorain, Ohio.

Q. And who was present besides yourself and Mr. Self?

A. Well, in the conversations I had with him about this question you just asked, there was no one else there, that is, in the immediate conversation.

Q. Please tell the Court as much as you can recall concerning the conversations you had with Mr. Self on this subject in September of 1948?

A. Well, I was told that advertisers that were using the Radio Station WEOL in Elyria should be approached and asked for their cooperation in discontinuing the radio advertising, and that in view of the fact that those advertisers in Lorain unquestionably owed a certain amount of loyalty to the Lorain Journal for not taking advertising [fol. 394] from other cities, other advertisers in other cities, and if the cooperation wasn't coming from these advertisers after a fair amount of time, they would be notified that drastic methods would be taken to do something about it.

Q. Have you had any other conversations with Mr. Self

regarding the policy of the Lorain Journal toward those of its advertisers who advertised on Station WEOL, other than the one you had in September, 1948, the substance of which you have just related?

A. I had several conversations with Mr. Self about this very same thing. It wasn't confined to one conversation.

Q. Were they all to about the same effect?

A. Yes.

Q. Did I understand you to testify that Mr. Self told you to see that the policy of the Journal was carried out, as he stated it, towards these radio advertisers?

A. Yes.

Q. And——

A. His instructions, to follow his instructions.

Q. To follow his instructions?

A. Yes.

Q. And pursuant to those instructions did you personally tell any advertisers in the Lorain Journal that they could not advertise both in the Journal and on the radio? [fol. 395] A. There is one advertiser particularly—I don't recall the names of the others, but there is one especially, a used car man on the highway between Elyria and Lorain. The name escapes me for the minutes. He was one of the instances that I had conversation with. The name may come to me in a second here. There were quite a few advertisers that——

Q. Just a moment. Was it Marshall's Auto Service?

A. That's it, Marshall's.

Q. What did Marshall's Auto Service do, if you know?

A. Well, Marshall's Auto Service was told—was sent a letter signed by Mr. Self, in fact, he told me he sent a letter, discontinuing their advertising in the Lorain Journal.

Mr. Fulton: I move that that be stricken out. He said that he understood or was told.

The Witness: I was told that by Mr. Self.

Mr. Fulton: Do you have the letter? Is it one of the letters that you have?

Mr. Kramer: We have the letter.

Mr. Fulton: Oh, it is a letter? All right.

Q. Did you have any salesmen working under your di- [fol. 396] rection in the classified advertising department?

A. You mean, in making that statement, you mean outside salesmen, fellows working on the outside? I had two boys, two young fellows. There were some girls, too, but these boys were on the outside.

Q. Did you instruct them to carry out this policy as told to you by Mr. Self?

A. I had conversations with them about it, yes, sir. That's right.

Q. Well——

A. Yes, I did.

Q. Do I understand you have testified Mr. Self told you the reason for this was that the Lorain Journal had protected the local advertisers by not accepting ads from outside Lorain, and that was the reason for the policy?

A. That was one of the reasons he gave, yes.

Q. You say it was one of the reasons. Were there any others?

A. Well, just as a matter of policy that they just didn't want that situation to exist.

Q. Did Mr. Self ever advise you whether or not a representative of the Lorain Journal listened to the programs on Radio Station WEOL?

A. I was told at least once that a monitoring system was used on WEOL to get the names of advertisers.

Q. Who told you that, sir?

[fol. 397] A. Mr. Self.

The Court: Mister who?

The Witness: Self.

The Court: That what was used?

The Witness: A monitoring system. That's what it is called in radio, Judge.

The Court: Monitoring?

The Witness: Monitoring, that's right.

Q. Do you remember when Mr. Self told you this?

A. Well, it had to be in the early fall of 1948, sometime in September probably.

Q. Did he tell you the reasons why the Lorain Journal was monitoring radio programs on WEOL?

A. To get the names of the advertisers using the radio station.

Q. I want to come back to one thing you said, because my associate says it wasn't clear. Do you or do you not know, are you certain about this, namely, that on one oc-

casion some copies of a certain day's issue of the Lorain Journal came out with an ad of the Sunday News in it and other copies for that same day did not have that ad in it? Is that what you meant to testify?

A. That's right.

Mr. Kramer: Subject to offering the letter that Mr. Self wrote to Mr. Marshall, that is all the direct examination [fol. 398] of this witness, your Honor.

The Court: Do you want to offer that now?

Mr. Kramer: I haven't got it, your Honor. I'm waiting for my associate to bring it down.

Cross-examination of Joseph Kelly.

By Mr. Fulton:

Q. You mentioned, sir, that you were fired. I think you used that word.

A. That's right.

Q. You were fired by Mr. Self?

A. That's right. He terminated my employment.

Q. You are now with a radio station, are you?

A. That's right.

Q. And where?

A. Dayton, Ohio.

Q. How long have you been with that radio station?

A. Since February 1, 1949.

Q. What is its name?

A. WONE.

Q. Had you been with any other radio station before that?

A. Never, at no time.

Q. What newspaper experience did you have before [fol. 399] you came to the Journal?

A. How much, you mean, in years?

Q. Yes.

A. About thirty years experience altogether.

Q. You said you were fired by Self?

A. That's right.

Q. And you left with considerable ill feeling toward Self, didn't you?

A. Well, in view of the fact that some of the things he

told me when he employed me, and the way the thing terminated, I was very disappointed.

Q. Now, I put the question to you, you left with extreme ill feeling toward Self, didn't you?

A. As far as anyone under the same circumstances, you wouldn't feel very kindly to the man.

Q. My question is: you left with ill feeling toward Mr. Self, didn't you?

A. Yes, in a way, sort of a grudge against him.

Q. That's right, you harbored a grudge against him, didn't you?

A. Not because of anything other than what he did to me.

Q. I say you harbored a grudge against him?

A. Yes, I'll say that.

Mr. Fulton: That is all.

[fol. 400] Mr. Kramer: Counsel has kindly consented to stipulate as to the authenticity of Government's Exhibit 140, which consists of an advertising contract with the Lorain Journal by Marshall's Auto Service, and a copy of a letter from D. P. Self, to G. W. Marshall dated November 2, 1948. I therefore offer Government's Exhibit 140 in evidence.

The Court: It may be received.

Mr. Kramer: I would like to read the letter:

"Dear Mr. Marshall:

You are hereby notified that your advertising contract dated August 12, 1948, is cancelled thirty days from this date. Sincerely, The Lorain Journal." Signed D. P. Self, Business Manager.

Mr. Fulton: I would like to call your Honor's attention to this contract, Exhibit 140, that it contains a provision: "This contract may be cancelled by the publisher upon thirty days written notice."

[fol. 401] ROBERT A. HARLEY, being called as a witness by plaintiff, and first duly sworn, was examined and testified as follows:

Direct examination of Robert A. Harley.

By Mr. Kramer:

Q. What is your name, please?
A. Robert A. Harley.
Q. What is your address?
A. I live in Springfield, Ohio.
Q. Where and by whom are you now employed?
A. Columbus Citizen, Columbus, Ohio.
Q. Is that a newspaper?
A. Yes, sir.
Q. Were you ever employed by the Lorain Journal?
A. I was.
Q. During what period were you employed there?
A. August 23, 1948 to March 17, 1949.
Q. Were you fired or did you leave voluntarily?
A. Well, I left after telling Mr. Maloy I wanted to look around for another job; I left about two and a half months after that.
Q. What was your position with the Lorain Journal?
A. Managing editor.
[fol. 402] Q. You were under Mr. Maloy?
A. That's right.
Q. Do you know Mr. D. P. Self?
A. I do.
Q. Was he with the Lorain Journal while you were there?
A. He was.
Q. What position did he hold?
A. He was business manager.
Q. Did you ever have any conversation with Mr. Self regarding the policy of the Lorain Journal toward advertisers who advertised over the Radio Station WEOL?
A. I did.
Q. When was it you had these conversations?
A. Well, as I recall it was in the late fall of 1948.
Q. Was anyone else present?
A. No. I was talking with Mr. Self.

Q. In the office of the Lorain Journal in Lorain, Ohio?
A. Yes.
Q. Tell the Court as near as you can remember what Mr. Self said.
A. Well, we were talking about WEOL and he had a list of advertisers on his desk, and he showed the list to me and said it was a list of advertisers who had been on WEOL or were on WEOL, and he was making a check mark of those he had persuaded to get off WEOL and come back to the newspaper and advertise in the newspaper [fol. 403] exclusively.
Q. Did he use the word "exclusively"?
A. He might not have used the exact word but that is the thing he meant.

Mr. Fulton: I ask the expression "that is the thing he meant" and that the word "exclusively" go out.
The Court: How is that?
Mr. Fulton: He said "exclusively" then he said, "well, he didn't use the word exclusively".
The Court: I guess you are quite right. That may go out.

Q. I would like to instruct the witness he cannot state a conclusion that he derived from what Mr. Self said. You can either tell us exactly what he said, which is of course improbable, or the substance of what he said. Now, what was the substance of what he said?
A. Well, the substance was he had this list of advertisers and they were advertisers who had been in the Lorain Journal and they also had gone and taken a contract to advertise on the radio, and of course he had approached the advertisers or his representatives had to cancel their contracts with WEOL; if they stayed on WEOL then they couldn't advertise in the Lorain Journal. And he had [fol. 404] already made some check marks on his list of some advertisers who had cancelled with the radio station.
Q. Do you know whether a letter was ever written to Journal advertisers regarding the policy of the Journal towards radio advertising?
A. Well, I recall of seeing a mimeograph letter there in the office that had been prepared.
Q. You don't know whether it was ever sent?

A. I do not.

Q. Did Mr. Self tell you anything about this mimeographed document?

A. He said letters were being sent to the advertisers.

Q. No, I am afraid you misunderstood me. Did he tell you anything about—he may not have, I don't know—did he tell you anything about this particular mimeographed letter?

A. No.

Q. Do you know a Mr. Harry Hughes?

A. I do.

Q. Was he or is he employed by the Lorain Journal?

A. He was employed when I was working there.

Q. What times was he employed?

A. Well, that was the period when I was there.

Q. At all times when you were there?

A. At all times when I was there.

[fol. 405] Q. Do you know where Mr. Harry Hughes is now?

A. No, I don't.

Mr. Kramer: Mr. Horvitz just told me Mr. Hughes is still with the Journal.

Q. Did you have any conversations with Mr. Hughes regarding the area in which the Lorain Journal was circulated by carrier or on newsstands? That can be answered yes or no.

A. Yes.

Q. Do you know what Mr. Hughes' position was with the Lorain Journal when you had these conversations?

A. Circulation manager.

Q. And do you remember where it was that you had these conversations?

A. In the office.

Q. What office?

A. Lorain Journal, Lorain, Ohio.

Q. Do you remember what room?

A. The editorial room.

Q. Did you have any conversations with Mr. Hughes regarding the Journal's relations with the Elyria Chronicle-Telegram?

A. Yes.

Q. Were they separate from the previous conversations you just described in time or was it all in the same one?

A. Well, I talked to him at various times in the editorial [fol. 406] room and in the other rooms there.

Q. Do you remember any particular conversation you had now?

A. Well, I remember talking about the Elyria paper with him at one time.

Q. And was anyone else present?

A. Not in hearing distance.

Q. Do you remember about when that was?

A. Well, I left there in the late fall of 1948.

Q. Please state the substance of the conversation you remember with Mr. Hughes regarding the Elyria paper.

A. Well, I asked him about the Elyria situation and why the Lorain Journal didn't compete more with the Elyria paper and go after more Elyria circulation, or the Elyria paper come into Lorain, because you couldn't buy the Elyria paper in Lorain on the news stands; and he said there was a sort of a standing agreement between the Elyria paper and the Lorain paper for each to stay in its own territory.

Q. Now, Mr. Harley, you used the word "agreement". Are you absolutely certain now—I don't mean certain beyond any doubt but certain beyond a reasonable doubt—that Mr. Hughes used the word "agreement"?

A. Well, as I recall he said "a standing agreement". That is always fixed in my mind, "a standing agreement."

Q. That is the best of your recollection?

[fol. 407] A. Yes.

Q. While you were with the Lorain Journal do you know whether one of its representatives listened to broadcasts of Station WEOL?

A. Yes.

Q. How do you know this?

A. One of the reporters working for me was listening to the programs.

Q. How do you know it?

A. I saw him in his car at the radio.

Q. Did you see him in the car?

A. I looked out of the window and his car was parked out there.

Q. Did he tell you why he was listening to the programs?

A. Mr. Maloy wanted him to listen to the programs.
Q. Is that what he told you or Mr. Maloy told you?
A. No, that is what the reporter said.
Q. Do you know while you were with the Lorain Journal whether it made any wire recordings of WEOL programs?
A. Yes, it did.
Q. How do you know?
A. Well, I saw the wire recording outfit there, and it was played later in the conference.
Q. The recordings were played later?
A. Yes.
[fol. 408] Q. Did you hear the recordings?
A. No.
Q. Did any representative of the Lorain Journal tell you why the recordings were being made?
A. No.
Q. Do you know why they were being made?
A. Well, they were being made——
Q. Yes or no.

Mr. Fulton: It appears to me——

Q. Yes or no, do you know why they were being made?
A. Yes.
Q. Now I am going to ask you but don't answer until counsel objects; why were they made?

Mr. Fulton: Objection. Nobody told him why so this can be nothing excepting the workings of his own mental processes.

The Court: Well, here is a man who is in the employ of the paper testified here they were being made. He is a responsible official at the time of the Lorain Journal. He is not one of the parties or defendants in this case but he had a responsible position.

Mr. Fulton: Are they claiming he is a co-conspirator?
The Court: Not necessarily.
[fol. 409] They don't have to. He was a responsible official of that company and certainly he can tell why those recordings were made. He may answer.

Mr. Fulton: He has to speculate to give an answer to that.
The Court: Well, if it is speculation, I will rule it out.
Mr. Fulton: He has not stated he had authority.
The Court: Do you know why they were made?

The Witness: They were made——
The Court: Do you know why?
The Witness: Yes.
The Court: Your answer is yes?
The Witness: Yes.
The Court: From whom did you learn why they were made?
The Witness: From several men in the advertising department.
The Court: From any of these people who are here, either S. A. Horvitz or I. Horvitz or Maloy or Self?
[fol. 410] The Witness: No.
The Court: All right. Sustained.

Q. I call your attention to the Elyria Chronicle-Telegram again. Did you ever have any conversation with anybody regarding a purchase of the Chronicle-Telegram by the Lorain Journal or any representative of the Lorain Journal?
A. Yes.
Q. With whom were the conversations held?
A. Mr. Hughes.
Q. Do you remember when the conversations were held?
A. Well, that was the same time of the other conversations.
Q. Was anyone else present besides you and Mr. Hughes, that is within hearing distance?
A. No.
Q. Do you remember what was said by Mr. Hughes on that subject or the substance of what he said?
A. Yes.
Q. Would you please state the substance of what he said?
A. He said that if the Elyria paper were ever sold that Mr. Horvitz had first chance on it. He had his eye on the paper.
Q. Thank you, sir. Do you know whether the Lorain Journal accepted or rejected classified advertisements submitted by the Lorain Sunday News while you were with the paper?
[fol. 411] A. Yes.
Q. Did they accept them or did they reject them?
A. They rejected them.

Q. Do you know who did the rejecting?
A. The classified ad manager.
Q. Who was that?
A. Mr. Joseph Kelly.
Q. The man who has just testified?
A. I don't know.
Q. Well, I don't know whether you know he testified. Excuse me.

Mr. Kramer: No further questions, your Honor, of this witness.

[fol. 412] Cross-examination of Robert A. Harley.

By Mr. Fulton:

Q. Now then, you said you weren't discharged, didn't you?
A. That's right.
Q. You also said that prior to your leaving you told Mr. Maloy you were going to look for another place, didn't you?
A. That's right.
Q. Mr. Maloy asked you to look for another place, didn't he?
A. No, he didn't.
Q. Did he never say that to you, sir?
A. He never did.
Q. Now, you mentioned something about a mimeographed document. It wasn't very much described in detail. I now ask you how large a pile of those mimeographed documents did you see.
A. Well, piled up that high.
Q. Indicating about three inches?

Mr. Kramer: Is that right?

A. It might have been about that high; no higher than that.
Q. Those documents were where when you observed them?
A. They were on top of the filing cabinet.
Q. Who pointed them out to you?
A. No one.
Q. You saw them yourself?

A. Yes.

[fol. 413] Q. Do you know whether they were mailed or not?

A. I do not.

Q. Did you count them?

A. I did not.

Q. Did anybody talk to you about them before you saw them?

A. No.

Q. Did anybody discuss with you their preparation?

A. No.

Q. Did you discuss with anybody after having seen them the preparation of those documents?

A. I don't recall.

Q. What department were you in?

A. Editorial.

Q. That is the same editorial department Mr. Maloy is in?

A. That's right.

Q. His position was what?

A. Editor.

Q. Yours was what?

A. Managing editor.

Q. Yours was next in seniority under his?

A. That's right.

Q. In what department was Mr. Self?

A. Business department.

Q. What department was Mr. Hughes in?

A. Circulation department.

[fol. 414] Q. Those three departments are in a sense the three mainstay departments of a newspaper; is that right?

A. Your advertising department is a main department, too.

Q. Well, the advertising department?

A. And the mechanical.

Q. But the editorial department is a department in and of itself; that's right, isn't it?

A. That's right.

Q. Separate from the business department; isn't that right?

A. That's right.

Q. And your work in the editorial department didn't

bring you in close daily business association with Mr. Self, did it?

A. I think it did.

Q. Did it?

A. Yes.

Q. How?

A. Well, by various stories that would have an advertising connection or some business connection to them, he would bring them over to the desk and ask certain stories to be covered.

Q. In other words, he would bring to you something for you to cover which came to him through his department?

A. That's right.

Q. To that extent you would be then as to those stories [fol. 415] working under his direction; is that right?

A. No; I wouldn't be working under his direction.

Q. You were working under the direction of Mr. Malloy, weren't you?

A. That's right.

Q. What brought you in close business or daily association with Mr. Hughes?

A. Well, he dropped in to the editorial department there from time to time and discussed various matters with the editorial staff, particularly sports. He was a great sportsman.

Q. What would he discuss with the editorial staff?

A. Well, as I say, sports; he was a great sports reader; he would talk about the game he had seen the night before, various situations in baseball, boxing.

Q. In other words, come in and discuss the sports events he saw the night before and heard about as any group of several men might who were interested in similar subjects?

A. That's right.

Q. Just as if I worked on the paper, I might come in and discuss baseball or, I hope not, a lawsuit; is that right?

A. That's right. Sports; anything like that.

Q. Mr. Kramer, hearing one of your answers, came back to it several times and now I do, too. In this con-[fol. 416] versation with Mr. Hughes that you related on the subject of the Elyria paper, may I inquire whether

that conversation was one of those impromptu affairs such as those brought about by Mr. Hughes' discussion of a sporting event?

A. It was a discussion there when he was at my desk and we were talking about various things and I asked the question.

Q. That is, you asked the question out of curiosity?

A. That's right.

Q. You didn't ask the question in and out of and through the performance of your duties and functions, did you?

A. As managing editor I was interested in why we didn't have more circulation and I thought there was a good deal there for circulation.

Mr. Kramer: Excuse me: I'm sorry, I didn't get that.

(Answer read by reporter.)

Q. Did you talk with, or did it occur to you to talk with your superior, Mr. Malloy, on that subject?

A. I was talking to the circulation manager who is supposed to know about the circulation.

Q. You were talking to him about the circulation, but your conversation developed into a matter of policy. Did you discuss that afterwards with Mr. Maloy?

A. No, I didn't.

[fol. 417] Q. Did you discuss it with either S. A. Horvitz or I. Horvitz, the two gentlemen here at the table?

A. No.

Q. Did you talk about it with Mr. Self?

A. I was satisfied with the answer I got from Mr. Hughes. He had bee- there 25 years; he should know.

Q. And he said there was—and I want this pounded down clearly now, as between the two papers a standing agreement?

A. That's correct.

Q. You have never heard anybody in the official family of either paper say any such thing, did you?

Mr. Kramer: Objection, your Honor.

The Court: Sustained.

Q. Did you ever hear that said by anybody connected with the Elyria paper?

A. I don't talk to people on the Elyria paper.

Q. That is not my question, sir.
A. No, I didn't.
Q. Do you know whether the Lorain paper, that is, the Lorain Journal, circulated in Elyria by carrier or through newsstands?
A. I don't know for certain.
The Court: I didn't hear your answer.
The Witness: I don't know for certain.
[fol. 418] Q. Well, in your uncertainty, what is your answer?
A. I believe there are carriers over there.
Q. Carriers of what?
A. Newspaper carriers.
Q. Of what paper?
A. Lorain Journal.
Q. In Elyria?
A. That's right.
Q. And that was the case when you were there, was it?
A. I am uncertain.
Q. What about the sale of Lorain papers in Elyria through the newstands?
A. Well, I didn't go into the circulation angle of that in that respect.
Q. You only went into it with respect to finding out about the standing agreement, is that it?
A. No; I was just having a conversation with Mr. Hughes.
Q. What was this standing agreement that Mr. Hughes told you about?

Mr. Kramer: Objection, your Honor.

Q. What did it embrace?
The Court: He can relate it again, if you want him to.
Q. What did this standing agreement embrace?

Mr. Kramer: Objection. I don't understand the question and I therefore perhaps immodestly assume the wit-
[fol. 419] ness doesn't understand it.
The Court: Well, in so far as you know, what was the standing agreement? That is all he is asking.
Q. What was the standing agreement as related to you by Mr. Hughes between these two newspapers?

A. All I know is that he said there was a standing agreement. I didn't go into even details of the agreement.

Q. Standing agreement to do what and for what?

A. A standing agreement that the Lorain paper would not press circulation in Elyria and that the Elyria paper was not coming into Lorain for circulation.

Mr. Fulton: All right. That is all.

Mr. Kramer: No further questions.

[fol. 420] WILLIAM GERHARDT, a witness called by plaintiff, being first duly sworn, testified as follows:

Direct examination of William Gerhardt.

By Mr. Kramer:

Q. What is your name?

A. William Gerhardt.

Q. Spell the last name.

A. G-e-r-h-a-r-d-t.

Q. Where do you live?

A. 1948 Broadway, Lorain, Ohio.

Q. Do you have any financial interest in the Lorain Sunday News?

A. Yes.

Q. What is the extent of that interest?

A. You mean stock held?

Q. Do you own stock?

A. Yes.

Q. What proportion of the total amount of stock do you hold?

A. Ten shares.

Q. Do you know how many shares there are outstanding?

A. That I don't know.

Q. Do you know the exact name of the company in which you own this stock?

A. Lorain Sunday News, Incorporated.

Q. Were you ever employed by the Lorain Journal?

[fol. 421] A. Yes.

Q. When?

A. From May 21, 1948 until August 31, 1949.
Q. Did you leave voluntarily or were you fired?
A. Fired.
Q. In what capacity were you employed?
A. Classified advertising sales.
Q. Classified advertising sales?
A. Yes.
Q. You were rather a low employee, then, I take it?
A. That's right.
Q. What was your salary a week?
A. I was under the government G.I., and the Journal paid me $25 a week.
Q. How much did Uncle Sam pay you?
A. All inclusive, it was $200. Uncle Sam gave me $90.
Q. $90 a month?
A. Yes.
Q. And the Journal gave you $25 each week?
A. That is right.
Q. Would it be fair to describe your job as on-the-job training?
A. Yes.
Q. Well, what were you being trained for?
A. Advertising.
[fol. 422] Q. Newspaper advertising?
A. Newspaper advertising.
Q. While you were employed by the Journal, who was your immediate superior?
A. Mr. Kelly was from May 21 of '48 until January of '49, and then Mr. Maus was from '49 until August of '49.
Q. How do you spell Maus?
A. M-a-u-s.
Q. I would like to get these dates again. When was Mr. Kelly your immediate superior?
A. From May 21 until January 2.
Q. From May 21, 1948?
A. Until January 2, 1949.
Q. And then Mr. Kelly came along?
A. That's right.
Q. You were under him from January 2 until the date you were fired; is that right?
A. That's right.

Q. What was that date?
A. August 31.
Q. 1949?
A. '49.
Q. Did Mr. Maus ever give you any instructions as to the policy of the Lorain Journal towards those of its advertisers who also advertised over radio station WEOL?
A. Yes.
[fol. 423] Q. When did he give you these instructions?
A. Shortly after he had become manager, classified manager; I would say in February.
Q. Of 1949?
A. '49.
Q. Where were you when he gave you these instructions?
A. Conference room of the Lorain Journal.
Q. In Lorain, Ohio?
A. Yes.
Q. Was anyone else present when he gave you these instructions?
A. Mr. Maus, Mr. Self, and Mr. Wilson.
Q. What is Mr. Wilson's first name?
A. Walter Wilson.
Q. What was his position then with the Journal?
A. Classified solicitor.
Q. Classified solicitor?
A. Yes; soliciting.
Q. State the substance of the instructions that Mr. Maus gave you regarding the advertising policy of the Lorain Journal towards those of its advertisers who advertised over the radio.
A. He instructed us what the policy was of the Lorain Journal in regards to the advertising of the radio and said that the policy was that we did not take advertising or accept advertising from advertisers that are advertising on the radio.
[fol. 424] Q. Did he say "over the radio" or did he say "over WEOL"?
A. Over WEOL.
Q. Do you remember whether or not he ever referred to it as the Elyria radio?
A. He did, yes. Elyria radio, WEOL.
Q. Were you ever given any instructions as to the policy

of the Lorain Journal towards those of its advertisers who also advertised in the Lorain Sunday News?

A. Yes.

Q. Who gave you those instructions?

A. Mr. Maus.

Q. And when were they given to you?

A. Well, they were constant from the first day that he took over until I had left; every week.

Q. Well, do you have any present recollection of any one of the instances when he gave you your instructions?

A. They appeared on Monday morning, every Monday morning. Whatever the first one was I do not know.

Q. I didn't ask you about the first one. I asked you about any particular one. Does any particular one stand out in your memory?

A. Yes.

Q. Now, stop right there. You said yes, one did. Who was present at this one that stands out in your memory?

A. Just myself. I was the only one present.

[fol. 425] Q. You and Mr. Maus alone?

A. That's right.

Q. Do you remember about when that was?

A. It was around June or July of 1949.

Q. Do you remember what Mr. Maus said to you?

A. The case was in regard to Debelco.

Q. What was that, Debelko Motor?

A. That was the Plymouth and Dodge dealer in Lorain. He instructed me to go down and tell Mr. Moyer that he would have to take all of his advertising out of the News, yes, out of the News, or he would be cancelled from the Journal.

Q. He instructed you to do that, is that it?

A. Yes.

Q. Did you do it?

A. Half way or half willingly.

Q. Which do you mean, half way or half willingly?

A. Half willingly.

Q. Which?

A. Half willingly.

Q. But you did do it?

A. I did.

Q. Do you remember what you said to Mr. Moyer?

A. I told Mr. Moyer exactly what Mr. Maus had told me, and Mr. Moyer asked to see Mr. Maus with me.

Q. And did Mr. Moyer see Mr. Maus?

A. Yes.

[fol. 426] Q. Where?

A. At the Debelko Motor Company.

Q. Mr. Maus came down with you?

A. Yes.

Q. Now, without stating what Mr. Moyer said, state what Mr. Maus said to Moyer, if anything.

A. That I couldn't tell you, because I waited in the outer office.

Q. Oh, you weren't present during the conversation?

A. I wasn't present during the conversation that took place, no.

Q. I believe I forgot to ask you what Mr. Maus told you the policy of the Lorain Journal was towards the Sunday News advertisers. I am not referring to radio advertisers. Did he tell you what the policy of the Lorain Journal was toward Sunday News advertisers?

A. He instructed us to go out and threaten the advertisers in the Sunday News that were advertising in the Sunday News, to threaten them that they would be thrown out of the Lorain Journal if their ad appeared in the Lorain Sunday News.

Q. If their ad appeared in——

A. In the Lorain Sunday News.

Q. Did he tell you that you were to tell them that their contracts would be cancelled?

A. No.

[fol. 427] Q. With respect to radio advertisers who also advertised in the Journal, did Mr. Maus instruct you to tell them their contracts would be cancelled if they persisted in advertising in the News?

A. Yes.

Mr. Kramer: That is all.

Cross-examination of William Gerhardt.

By Mr. Fulton:

Q. You are a shareholder in this paper over in Lorain that publishes on Sunday?
A. Yes.
Q. Do you work also for that paper?
A. Yes.
Q. What is your job?
A. Advertising manager.
Q. What other position do you have with the paper?
A. That is all, outside of stockholder.
Q. Are you a director?
A. Excuse me, director.
Q. Are you an officer?
A. No.
Q. Who is President?
A. Mr. Stockert.
Q. Who is Vice President?
A. His wife.
[fol. 428] Q. Are you the Treasurer?
A. No.
Q. Who is?

Mr. Kramer: I object to who the Treasurer is, if he isn't. I didn't ask him about this. All he can bring out is what he is. It is outside of the scope of the direct.

The Court: What is the purpose of it?

Mr. Fulton: I just want to see what his connection is with this paper.

The Court: You can ask him what his connection is. I am wondering what purpose is served by finding out about the officers.

Mr. Fulton: I was asking him about officers because his answer to the first question indicated he wasn't sure about his connection.

The Court: I think he was sure when you asked him if he held any office.

Q. Who was it that told you to threaten advertisers?
A. Say that again.
Q. Who told you to threaten advertisers?
A. Mr. Maus.
Q. Who used the word "threaten"?

A. Mr. Maus.

Q. So that in giving those instructions he said to you to [fol. 429] go out and threaten these people?

A. That's right.

Q. Did he tell you how to threaten them?

A. That was our job. He told us to threaten them. He did stress the point that the threatening was to be cancelled, they were to be cancelled out of the paper. How we went about threatening otherwise, was our job.

Q. What about those who advertised over the radio?

A. That was a direct threat from him. It came from him and Mr. Self both.

Q. To whom?

A. The advertiser.

Q. Were you with them?

A. Yes, I was.

Q. When they made the threats?

A. That's right.

Q. And they used the word "threats" when they talked to the advertisers, did they?

A. In regards to whom?

Q. The advertisers. When you were with Mr. Self when he was talking to someone who advertised over the radio did you hear him say in effect, "I" or "we" threaten you?

A. Not Mr. Self, no. Mr. Maus.

Q. You heard Mr. Maus use the word "threat" to the advertisers?

A. Not threaten, but cancel. They would cancel their [fol. 430] contract. It wasn't threaten there was no threat to it.

Q. I see. Now, you are the advertising man, aren't you?

Mr. Horvitz: Advertising Manager.

Mr. Fulton: No; advertising man.

Q. You are the advertising man?

A. Yes.

Q. Who was the advertising manager?

The Court: I think it might be well if only one person would cross-examine here.

Q. Who is the advertising manager?

A. I am.

The Court: I think we would get along much better.

Q. Do you know whether any advertisers who carry advertising in your paper, your Sunday paper, also advertised in the Lorain Journal?

A. Yes, they do.

Q. Do they?

A. Yes.

Q. Quite a few?

A. There are.

Mr. Fulton: That is all.

Mr. Kramer: No further questions.

[fol. 431] Further Cross-examination of Isadore Horvitz.

By Mr. Kramer:

Mr. Kramer: I offer in evidence Government's Exhibit 119, which is the Audit Report for the Lorain Journal and the Times-Herald, as to which I understand there will be no objection.

Mr. Fulton: No objection.

Mr. Kramer: May it be admitted, your Honor?

The Court: It may be received.

Mr. Kramer: I will offer in evidence one paragraph of a stipulation.

Q. Is the Lorain Journal a general newspaper, that is, a newspaper of general daily circulation?

A. Yes.

Mr. Kramer: I offer in evidence, your Honor, paragraph 1 of a stipulation between the United States of America and the defendant, dated January 25, 1950, relating to the national advertising of the Lorain Journal. Your Honor has a copy of it before you.

The Court: Yes.

Mr. Kramer: I would like to read part of it into the record.

"United States of America, Plaintiff, and the Defendants, Lorain Journal, Samuel A. Horvitz, Isadore Horvitz, Frank Maloy, and D. P. Self, by their attorneys, hereby stipulate and agree that the Lorain Journal is now a party to contracts with the concerns identified below through the advertising agencies whose

[fol. 432] names and addresses are also set forth below, the principal place of business of each of the concerns advertising through said agencies is located in a state other than the State of Ohio. Each of said concerns has its advertising copy submitted to the Lorain Journal Company by its advertising agency. Said contracts provide for the purchase by each of said concerns, through its advertising agent, of advertising space in the Journal and the Times-Herald, a newspaper, and pursuant to said contracts the Lorain Journal Company publishes said advertisements in said newspaper.''

There then follows a list of some sixty odd, perhaps more, contracts. I would like to call the Court's attention to the fact that in each case the address of the advertising agency is outside the State of Ohio.

Q. Do you know where the advertising copy pursuant to the contracts as to which your counsel has stipulated comes from?

A. No, I do not.

Q. You do not?

A. No.

Q. Who in your newspaper organization would know that?

A. Mr. Self, in all probability.

Q. In the course of carrying out these national advertising contracts, are you not paid by check for doing your share of the contract?

[fol. 433] A. I would say in most instances we are paid by check.

Q. And in those instances where you are paid by check, does the check come from the advertising agency or the advertiser, if you know?

A. I don't know.

Q. Mr. Self would know that, is that it?

A. Yes.

Q. You are President of the Lorain Journal Company?

A. Yes, sir.

Q. Can you estimate what proportion of your total gross advertising revenue is derived from national advertising?

Mr. Fulton: Objection, if your Honor please.

Mr. Kramer: On what ground?

Mr. Fulton: I don't think it makes any difference what the gross revenue is.

The Court: The volume of business done on a national scale might have some bearing.

Mr. Fulton: Now, if your Honor please, the claim made here is that the Lorain Journal and these defendants have done acts which interfere with interstate trade and commerce. It isn't necessary that persons charged with interfering with interstate trade and commerce be so engaged themselves. We all know that.

[fol. 434] The Court: Why wouldn't they have a right to establish it? They certainly can't be limited to proving only part of their case, can they?

Mr. Fulton: I say this, that if they don't establish that these other persons in this case are engaged in interstate commerce, their case fails, because it is the commerce through them that we are said to impinge upon. It is not upon our own commerce.

The Court: They are charged with attempted monopoly as well.

Mr. Fulton: A monopoly in a certain branch of trade and commerce that thus far has been established to be simply local.

The Court: Is it the fear of disclosing the information on national conditions in the newspapers that causes you to object so seriously?

Mr. Fulton: That is partly it, but I still reply upon this other legal proposition. We don't have to be engaged in interstate commerce to commit a wrong here.

The Court: I wholeheartedly agree with you on that, but if it can be shown they are engaged in it, the Government is entitled to prove that.

Mr. Fulton: It isn't necessary for them to prove it.

The Court: It may not be necessary, but they are cer-

[fol. 435] tainly entitled to prove it.

Mr. Fulton: I don't know why it is necessary for them to prove something that isn't essential to their case.

The Court: I don't know whether it is or not at this point. Until the whole case is developed, I cannot tell.

Mr. Fulton: Right up here in the Cuyahoga Valley is a little railroad, the Newburgh & South Shore, which op-

erates completely intra-state, operates completely within this county, operates within the City of Cleveland, and you could establish its impingement upon interstate commerce either by restraint or monopoly without establishing what its gross revenues are, without showing whether it is a Class 1 railroad or Class 2.

The Court: I haven't any doubt about that. It is purely a question as to the extent or volume of business done interstatewise.

Mr. Kramer: If the court please, I haven't asked for the volume: I asked what proportion.

The Court: Yes; what proportion of it is national advertising.

Mr. Kramer: I didn't ask what the volume was.

Mr. Fulton: Then I misunderstood you.

[fol. 436] The Court: That's what I understood the question to be, what proportion of the volume of business done was national advertising.

Mr. Fulton: That is a different question.

Q. What proportion of your total gross receipts is derived from national advertising? The answer, if you know, should be a percentage figure.

A. Less than ten per cent.

Q. Is it more than five per cent?

A. I would say it is between five per cent and ten per cent.

Q. Mr. Self would know about that, too, wouldn't he?

A. Yes.

Q. Do you have any written contracts with advertisers for goods and services who are located in Lorain County?

A. Yes, we have contracts with advertisers.

Q. Is the cost of those contracts in each case borne by the merchant in Lorain County, or is it shared with someone else, if you know?

A. That I couldn't tell you.

Q. You don't know?

A. No.

Q. Are any copies of the Lorain Journal sent outside the State of Ohio?

A. I would like to refer to that exhibit.

Q. You want to refer to Government's Exhibit 119, the [fol. 437] Audit Bureau Report; is that right?

A. That's correct. 153 in all the other states.

Q. 153 copies of the Lorain Journal are mailed outside the State of Ohio?

A. Yes, sir.

Q. By the Lorain Journal, is that right?

A. Yes, sir.

Q. 153 out of a total circulation of how many as of December 31, 1948?

A. 20,690.

The Court: Is that paid circulation?

Mr. Kramer: The daily average net paid circulation, as audited by the Audit Bureau of Circulation.

Q. Isn't it a fact, Mr. Horvitz, that the Audit Bureau is regarded pretty much in the newspaper industry as the Bible?

A. That's correct, the circulation Bible. It is accepted by everybody in the advertising and newspaper industry.

Q. Does the Lorain Journal have any contracts with so-called press associations?

A. Yes.

Q. I hand you Government's Exhibits 121 and 122, and ask you to tell me very briefly what each of those is.

A. Photostatic copy of the standard form of United Press Association and King Features Syndicate for the International News Service wires.

[fol. 438] Q. Which is that? You say "it". Which one?

A. Exhibit 122 is International News Service and 121 is United Press.

Q. These contracts are now in effect, are they?

A. (Looking at contracts.)

Q. Mr. Horvitz, don't you know without looking whether you now have a contract?

A. I know we have a contract, but I don't know whether it is this one or not.

Q. You don't know whether that's the one? Thank you for the compliment, sir.

A. The King Features contract is in effect. I haven't found anything in the United Press Association that it is still in effect.

Q. Do you now have a contract with the United Press Association?

A. Yes.

Mr. Kramer: May we ask counsel to look this over at the next recess and see if we can stipulate as to whether this is the one, your Honor?

The Witness: This contract was in effect from February 1, 1938 to January 31, 1943. I don't find any extension of it.

The Court: We will take a recess at this time.

(Short recess taken.)

[fol. 439] Mr. Fulton: We will stipulate that this Exhibit is still in force and effect.

Mr. Kramer: Exhibit 121?

Mr. Fulton: Yes. Except as to the prices payable under it. Those have changed by virtue of correspondence between the parties.

The Court: That is the 1943 contract?

Mr. Fulton: That's right.

Mr. Kramer: I offer in evidence Government's Exhibits 121 and 122.

The Court: They may be received.

Mr. Fulton: I object to their receipt in evidence generally.

The Court: On what ground?

Mr. Fulton: That they have no bearing at all upon the issues in this case, and then, second, I ask that their receipt be limited to the contracts in their entirety, excluding the payment provisions, because those payment provisions are something that are confidential as between the contracting parties. Now, if the court please, I am now talking about confidential in contemplation of the law of evidence.

The Court: I was going to ask you whether they were confidential in courts.

Mr. Fulton: No, your Honor. I am not talking about that kind of confidential information, but confidential as [fol. 440] between the contracting parties. I feel, on behalf of my clients here we ought not be the party who divulges to the public in any fashion what these operations are. We have another contracting party here, so I object to the documents themselves, although I stipulate they are

in force and effect, except as to these stipulated amounts, and I ask that the exhibits themselves be limited to exclude the amounts.

[fol. 441] (Further discussion had.)

The Court: The objection will be overruled. They may be received.

Mr. Kramer: Exhibits 121 and 122 then are in evidence, is that correct, your Honor?

The Court: Yes.

Q. Do you have a contract with the Associated Press for supplying you news?

A. It is not a contract.

Q. But you do get news from Associated Press, is that it?

A. Yes.

Q. Yes.

A. Yes, sir.

Q. How does that news that you get from the Associated Press, the United Press and International News Service reach you in Lorain?

A. It comes by wire from Columbus, Ohio.

Q. I hand you what purports to be a copy of the Lorain Journal for Monday, February 27, 1950. Am I right, is that what I have handed you?

A. Yes, sir.

Q. I notice that the first story with big black headlines is: "UMW denies contempt charge; agrees to let judge decide evidence and law." Then it says, "Bulletin, Washington (UP)." Is that right?

A. It has a Washington date line.

[fol. 442] Q. So the news comes from Washington, doesn't it?

A. It came from Washington to the Bureau in Columbus, and the Bureau in Columbus either rewrites it or sends it out together with other news from what they call their state wire.

Q. And the same would be true of any other story coming from the United Press, the Associated Press, of INS bearing a date line other than Columbus, is that right? It would go first to Columbus and from Columbus to you?

A. That's right.

Mr. Kramer: I don't think it will be necessary to have a representative of the United Press, in view of that.

Q. Do you have any contracts with so-called syndicates or concerns furnishing you syndicated columns or so-called features?

A. Yes.

Q. I hand you Government's Exhibits 123 through 128, inclusive, and ask you to tell me whether or not each of these documents is a contract that is in effect between you and some supplier outside the State of Ohio of a syndicated column or feature?

Mr. Fulton: While he is looking at them, may I have the record show an objection will be interposed to these on the same ground as was interposed to Exhibits 121 and 122, both the general objection and the request as to limi-
[fol. 443] tation.

The Court: Yes.

Mr. Fulton: It's the same objection and request which I made for deletion or limitation of the amounts, and so forth.

The Court: The record may show the objection and the request.

A. Two of these aren't signed by the Lorain Journal, but I assume we get that service.

Mr. Kramer: Would you please read the question, Mr. Reporter?

(Question read by reporter.)

Q. To the best of your knowledge.

A. With the exception of these two, I would say to the best of my knowledge the others are.

Q. What are the two, please call the numbers out. The record doesn't show.

A. 126 and 128.

Q. Your answer then is yes, with the exception of 126 and 128, is that it?

A. I'm not sure of these two.

Q. You are not sure as to those?

A. That's right.

Q. All right, hold 126 and 128 in your hand, please, sir,

and I will ask you a couple of questions. 126 calls for what, the sale of what, Mr. Horvitz?

[fol. 444] A. National Whirligig and Superman.

Q. I show you the same issue of February 27th and ask you to tell me whether or not on that day, at least, you didn't run Superman?

A. Yes.

Q. What is "National Whirligig"?

A. It's a column. It should be on the editorial page.

Q. And National Whirligig appeared in that issue too, didn't it?

A. Yes.

Q. Now, Exhibit 128 "This Funny World", that's a kind of cartoon, is it?

A. Here it is (indicating).

Q. That also appeared in that issue, didn't it?

A. Yes.

Mr. Kramer: Will counsel stipulate that Exhibits 126 and 128 are also in effect?

Mr. Fulton: We will so stipulate.

Mr. Kramer: I offer in evidence Exhibits 123 through 128, inclusive.

The Court: They may be received.

Q. Pursuant to each of these contracts, is it not true that matrixes or typed material is sent to you from outside the State of Ohio for publication in your newspaper in the State of Ohio?

A. They come in mat form.

[fol. 445] Q. From outside the State of Ohio?

A. I don't know.

Q. You don't know? You are president of the Lorain Journal, aren't you?

A. I know they come in by mail, but I don't know definitely where they come from.

Q. Is there anyone in the Lorain Journal who would know?

A. Mr. Maloy would know.

Q. Mr. Maloy would know?

A. Yes, sir.

Q. Does the Lorain Journal have any contracts for newsprint and supplies with concerns located outside the State of Ohio?

A. Yes.

Q. I hand you Government's Exhibits 129 and 130 and ask you if those are those contracts that you just referred to in your answer to my question?

A. The contract with the Abitibi Sales Company, Ltd. is in effect.

Q. What is the number of the exhibit, sir?

A. 129.

Q. Exhibit No. 130 is not in effect?

A. I think it superseded 130.

(Discussion had off record.)

Mr. Kramer: Will counsel stipulate that contract marked Plaintiff's Exhibit 129 is now in effect and that it super-
[fol. 446] seded Plaintiff's Exhibit 130?

Mr. Fulton: We will so stipulate. We do so stipulate.

Mr. Kramer: I offer in evidence Plaintiff's Exhibits 129 and 130.

The Court: They may be received.

Mr. Fulton: The earlier numbered exhibit supersedes the later numbered exhibit?

Mr. Kramer: Right.

Q. How is newsprint paper shipped to you pursuant to these contracts?

A. It comes in railroad cars.

Q. From where?

A. Canada.

Q. Do you know where it enters the United States?

A. No, I do not.

Q. Can you give us an estimate of the cost of newsprint for some recent years?

A. Somewhere between 90 and 100 thousand dollars.

Q. Is an adequate supply of newsprint vital in the publication of your newspaper?

A. Yes, sir.

Q. Would a decrease in the amount of newsprint you receive result in a decrease in volume of your circulation?

A. Not necessarily.

[fol. 447] Q. Has the Lorain Journal ever experienced an inability to maintain its circulation growth due to the shortage of newsprint?

A. Yes, sir, the shortage during the War.

Q. I hand you Government's Exhibit 131 and ask you to tell me whether or not it bears your signature and, if so, what it is.

A. The minutes of a special meeting of the Board of Directors of the Lorain Journal on November 29, 1946.

Q. It bears your signature, doesn't it?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Mr. Kramer: I offer Government's Exhibit 131 in evidence, if the court please.

The Court: Which one is that?

Mr. Kramer: November 29, 1946, the minutes.

The Court: They may be received.

Mr. Kramer: I would like to read a small portion of it:

> "The president stated that the purpose of the meeting was to give consideration to the company's newsprint supply situation, which has been a matter of deep concern to the officers of the company. Due to the short supply of newsprint, it has not been possible to secure an adequate supply and this has adversely af-[fol. 448] fected our newspaper in the following respects:
>
> (1) That we have been unable to publish and give its readers all the news, comics, and features which they are entitled to.
>
> (2) That the circulation growth of the newspaper has been retarded.
>
> (3) That we have been unable to publish all the advertising that our advertisers desired published.
>
> The President stated that the officers of the company have under consideration several propositions to participate in a plan to secure an interest in a newsprint mill, that would enable the company to secure an adequate supply of newsprint at a material savings in cost."

Q. Mr. Horvitz, I show you Government's Exhibit 132, and ask you if it bears your signature and what it is.

A. Minutes of a special meeting of the Board of Directors of the Lorain Journal Company on December 17, 1948.

Q. Your signature is on there?
A. Yes, sir.

Mr. Kramer: I offer Government's Exhibit 132 in evidence.

Mr. Fulton: Just give me a chance to look at it. Does your Honor have it before him?

[fol. 449] The Court: Yes, I have.

Mr. Fulton: Well, I object because I can't see that it bears at all here. I mean it just clutters up the record.

Mr. Kramer: That last paragraph is what I am after, your Honor.

The Court: What is the purpose of it?

Mr. Kramer: To show that an adequate supply of newsprint is essential to the operation of a newspaper and that it is so essential that the Lorain Journal even considered building its own newsprint manufacturing plant. You have to read the two exhibits together, sir.

The Court: All right, it may be received.

Mr. Kramer: I won't read this exhibit, if the court please.

Q. Now, we may return to a subject that occupied us yesterday, Mr. Horvitz. I want to ask you about this map to see if you agree it is an accurate map, insofar as the circulation of the Lorain Journal is concerned, and that's Government's Exhibit 117. You remember you agreed with me that the audit report was the bible, so I am going to hand you the bible of the newspaper industry, Government's Exhibit 119, and ask you to follow with me to see if the circulation figures are accurate. Are we ready, sir?

[fol. 450] A. Yes.

Q. Circulation—and when I say circulation I refer only to news stand and carrier circulation. The Lorain Journal in Lorain is 13,369, as of that date?
A. Yes.
Q. Avon Lake 632.
A. Yes.
Q. Avon 418.
A. Yes.
Q. Elyria 1,684.
A. Yes.
Q. Grafton 49.
A. Yes.

Q. Wellington 216.
A. Yes.
Q. Oberlin 169.
A. Yes.
Q. Birmingham 113.
A. Yes.
Q. South Amherst 335.
A. Yes.
Q. Brownhelm 101.
A. Yes, sir.
Q. Amherst 1,317.
A. Yes.
Q. Vermillion 751.
A. Yes.

[fol. 451] Mr. Kramer: I offer Government's Exhibit 117 in evidence, if the court please. The exhibit, of course is not this map but the reduced size which is exactly the same.

The Court: It may be received.

Mr. Fulton: There is no objection.

Q. Now, Mr. Horvitz, I want to read to you the 1946 memorandum—rather, minutes of the directors meeting, Government's Exhibit 133, read that last paragraph of that page over to yourself.

Mr. Fulton: That's the one you read into the record and withdrew the exhibit.

Mr. Kramer: And withdrew the exhibit, yes, in a moment of generosity.

Q. You remember you said in the paragraph I read, "In view of the ever present contingency it is very essential that the company carefully husband its resources in order that it can at all times be in a position to protect its interests." You remember that sentence?

A. Yes.

Q. What did you mean by that, that is, by resources what did you mean?

A. The resources are the financial and the newspaper, of course, the buildings and plant that we have in Lorain, and which would have to be maintained, because we have already gone through periods *with* operations were not [fol. 452] profitable.

Q. Well, you did husband your resources from the date of this meeting on, didn't you, and carried out your intention, which was to husband your resources. Right?

A. We have several problems in operating a newspaper that we have to have financial backing. We may not be long in Lorain before we may have to put up a new building to house that newspaper.

Mr. Kramer: Would you read my question?

(Question read by reporter.)

A. Yes.

Q. And you made a profit each year since?

A. Yes. May I explain something in there?

Q. Any time, just ask me and you can always explain your answer.

A. You read in the record this morning the sentence "they are also enjoying a quasi-monopolistic position." That is a standard newspaper expression used by newspaper men all through the industry. But I would say that expression applies to any particular newspaper or city that has one newspaper. That expression would be applied to the Cleveland Plain Dealer on mornings and on Sunday Publication, the Akron Beacon-Journal, the Youngstown Vindicator. In fact, there are only three or four cities in the State of Ohio that that probably wouldn't apply to because that is about all the cities that have more than one newspaper.

[fol. 453] Q. All right. I think you used the words quasi-monopolistic. As I understand it you are saying it applies to where there is only one newspaper in town.

A. That is correct, but it is a common expression among newspaper men.

Q. That's perfectly all right. I wasn't clear about one thing you said this morning in reference to Cleveland papers that we all agree circulate, to what amounts the record doesn't show, in Lorain. Do these Cleveland papers regularly carry local news? You said they were news competitors of yours. Did you mean by that national or state news?

A. No, they have local correspondents. I think all three of the Cleveland papers have correspondents in Lorain, that give them news, local Lorain news.

Q. What happened in Lorain, do they print?

A. Lorain and the county. The Press has a state service, and I am pretty sure the Plain Dealer and News both maintain correspondents in that territory.

[fol. 454] Q. Isn't it a fact, Mr. Horvitz, that the reason you wanted to husband your resources was to be in a strong position in the event someone decided to compete with you,—strong financial position?

A. Several reasons.

Q. Well, isn't that one of the reasons?

A. That is, if we had competition with other newspapers in Lorain our operations probably would not be profitable; they weren't in the past.

Q. Well, is it your position there just isn't room in Lorain for two papers?

A. Well, of all the cities in the State of Ohio, I think there is only three or four cities, that is, outside of Cleveland, Cincinnati and Columbus, there is only one city in the State of Ohio that has two newspapers under different ownership, and that is Zanesville, Ohio; every other city in Ohio has one newspaper ownership.

Q. This is very important. Is it or is it not your position there is not any room for more than one daily newspaper?

A. Economically, no.

Q. In other words, if there were two newspapers, one or both would have to operate at a loss; is that your position?

A. I would say probably both.

Q. As a consequence, what you are driving at in 1946 is that you wanted to make certain that you were in the position to be the one newspaper that would be able to [fol. 455] operate at a profit in Lorain, economically, at a profit?

A. We wanted to be in financial position if we did encounter that situation we would have financial resources back of us.

Q. And that is exactly what you undertook to do, isn't it?

A. Yes.

Q. I hand you Government's Exhibits 141, 142, 143, 144, 145 and 146 and ask you to tell me in each case, each document separately, what each one of those documents is. Is each one of those documents a financial statement of the Lorain Journal Company which you submitted to this court

pursuant to subpoena duces tecum served on you by the United States?

A. (After examining documents.) They are balance sheets and statements of income for the years 1946, 1947 and 1948.

Q. And you furnished them to us under subpoena?

A. I gave them to you.

Q. You gave them to me in this court room?

A. Yes.

Q. Where is the balance sheet and profit and loss statement for 1949, which you have been asked for?

A. I told you the other day it hadn't been prepared yet.

Q. When will it be prepared?

[fol. 456] A. Probably within the next week or so.

Mr. Kramer: We call upon counsel to produce it as soon as it is prepared.

Mr. Fulton: We will produce it, that is, we will honor any subpoena issued to us, to be sure.

Mr. Kramer: I offer in evidence Government's Exhibits 141 to 146, inclusive.

Mr. Fulton: There is objection to each and all of them.

Now, if your Honor please, I think it is immaterial what the balance sheets of this defendant corporation may show. It doesn't make any difference whether the company operates at a profit or operates at a loss; the balance sheet is of no moment at all. Whether it makes a profit or doesn't can't bear, I think, even on the attempt to monopolize, much less the claims of conspiracy to monopolize or conspiracy in restraint of trade.

When I make this objection I take this opportunity to say I have no objection to your Honor reading documents like that, because I know when it comes to decision your Honor will readily sift, where it is proper, the wheat from the chaff. But I object completely and generally because I think this evidence doesn't bear on this case. If your Honor thinks otherwise, that it has some weight and should [fol. 457] be considered, or if your Honor wishes to reserve that decision, in either event I should like some way by which these exhibits can be impounded. I don't want them kept from the record if they are finally admitted as evidence, but impounded in such a way that the informa-

tion contained in the exhibits do not become public property.

In other words, I make an objection to the evidence and a request about the use of the data contained in the exhibits.

Mr. Kramer: If the Court please, at the risk of repetition, I point out that this is, speaking loosely, a monopoly case, and I would suppose that the financial position of the alleged monopolist is always relevant. I agree that the financial data may not prove the Government's case: that is a matter of weight. But I would suppose that the court is always entitled to know what the financial position is and what the court is entitled to know is what goes into evidence.

I recall the American Tobacco case, that is the most recent one, decided by a native of this city, Mr. Justice Burton, in 328 U. S. Frankly, it was picked more or less at random, but I recall having had my recollection refreshed at what length Mr. Justice Burton went into the record to show the net worth of the Big Three Tobacco [fol. 458] Companies as compared to those of the other companies, and as showing power, relative power of the companies.

I recall some fifteen cases which I jotted down in a memorandum prepared for another purpose, where evidence as to the earnings of the defendant or defendants was admitted. I would like to give the Court the names of those cases. I want to make it perfectly clear in some of them there was no objection made; in some there was.

The first Standard Oil case in 221 U. S. at 1, page 50.

The Alcoa case. By the way, I think that case is very interesting because, as I recall it, the Government was attempting to prove monopoly profits, and the Court, Mr. Justice Hand, said he didn't think Alcoa made any, but as I understand there was no question the Court could look at it and find out, even though it concluded the Alcoa Company had not obtained monopoly profits.

The first American Tobacco case, 221 U. S. 160, at 162.

United States Steel case, 251 U. S. 459.

Sugar Institute case, 15 Fed. Sup. 817-888.

And if I dare mention competing with a newspaper the Great Atlantic & Pacific Tea Company case, 57 Fed. Sup-[fol. 459] plement, 626; and

The Corn Products Refining case,—that is another decision by Mr. Justice Learned Hand, which I think perhaps is the best in the law, 234 Federal 964.

Now, those are random cases.

There is a much more important reason why these financial statements should be admitted in this case, and that is because of the Government's theory in this case. The Government's position is the Times-Herald was bought by Samuel Horvitz, the Lorain Journal, the Mansfield Journal Company,—I emphasize the fact that it was also bought by Samuel Horvitz, acting on his own, because that is our answer in part to the suggestion by my brother there cannot be a conspiracy between the corporation and two or more of its officers acting on behalf of the corporation. We say that the purpose of acquiring the Times-Herald was to eliminate its competition. We say that the minutes which I read in evidence demonstrate that it was the purpose, intent and design of the Lorain Journal Company, of Samuel Horvitz, Isadore Horvitz and perhaps the other defendants, in fact I might say, certainly the other defendants, to keep competition out of the city of Lorain by one means or another, buying it out, driving it out, contracting to keep it out; and we say that this minute shows that it [fol. 460] was always uppermost in the minds of the Lorain Journal Company and the officers I have mentioned to keep in a strong financial position because they were well aware that radio was here to stay and that some day they might be confronted with competition both by that and by somebody who wanted to exercise the right granted in the constitution to a free press. And they wanted to have sufficient financial resources at any time to be on top in any such fight, and we say the exhibits that we have offered now pending demonstrate beyond cavil that they were successful in their efforts always to maintain themselves in a dominating financial position.

I might add, although I do not press it, that the exhibits are relevant to show the financial data regarding interstate transactions, as to which Mr. Isadore Horvitz' memory, and I believe we can show his accuracy, on one point is somewhat failing, but I do not press that ground because I believe the other grounds sufficient for the admissibility of these exhibits.

Mr. Fulton: May I say just one thing?

I am thinking of the very first case cited, the American Tobacco case. Of course, the writer of that opinion could use in support of it, if it was proper support, anything [fol. 461] that might be in the record before the Court at that time. The record is made up by the trial court. I don't know whether objections were made to such evidence or not.

I do say, by way of passing, that the Hon. Mr. Justice Burton, who many of us in this room know, in that case in the opinion himself confused a little bit a couple of concepts, namely, monopoly and monopolization with conspiracy to monopolize, and I just say that by way of passing.

Every case that has been cited has been a case of a corporation publicly owned. Corporations who want the public to know something about their financial affairs: they are obliged to do it, actually,—Alcoa, the American Tobacco Company. Here we are dealing with a company that is closely held, indeed, a family corporation, and no need in the world for anybody knowing anything about its internal affairs.

The Court: I will reserve ruling on these exhibits. In the meantime, however, I do want counsel to call to my attention those cases in which an objection was made to introducing testimony as to the financial position of the company.

Mr. Kramer: Would Monday be time enough?

The Court: Yes, or Tuesday will be time enough, when we reconvene in this case.

[fol. 462] The Court: I do want to make the comment that it is perfectly evident that in the case where a large monopoly is charged by the Government, that the size of the monopoly and the size of its operations may be of considerable weight in determining whether or not there is the ability to maintain such monopolistic practice. I don't know whether that is true in this case or not. That is a matter I want to consider and give some thought to. In the meantime, as I say, I would like counsel point out to me those cases in which evidence of this nature was offered and to which objection was made and it was received over objection.

In the meantime I will grant the request of counsel for

the defendant: these exhibits will not be disclosed, as you suggest, by the court.

Mr. Kramer: Kept by the Court?

The Court: By the Court.

Mr. Kramer: If your Honor please, because your Honor may get a copy of the transcript before you get our memorandum, I should like to say the one case I should have mentioned is Wilson vs. U. S., in which this question came up on whether or not financial data was relevant, because they refused to comply with a subpoena; and, apparently in those days, the court decided the issue as to whether or not they would be admissible on a subpoena. The citation is 201 U. S. 92.

(Adjournment taken to Tuesday.)

[fol. 463] Tuesday, March 7, 1950, 10:00 O'clock A. M.

The Court: Before we proceed any further, the objections to the Exhibits 141, 142, 143, 144, 145, 146 will be sustained. You may return these, Mr. Wilson, to the parties.

Cross-examination of Isadore Horvitz (Resumed).

By Mr. Kramer:

Q. Mr. Horvitz, there is only one part of your testimony that didn't seem clear to me after reading the transcript. Page 308 I asked you whether there is or is not any competition with the Lorain Journal in the City of Lorain from any other daily newspaper. You remember that, don't you?

A. Yes.

Q. And you replied that you could not answer that question directly. I think perhaps you will be able to if I break the question down. Is there any other daily newspaper that competes with you, daily newspaper, that competes with you in the City of Lorain that is published in Lorain County?

A. Circulation-wise, yes.

Q. My question was: is there any daily newspaper that competes with you that is published in Lorain County, [fol. 464] printed and published.

A. Yes.

Q. What is the name of the paper?

A. The Elyria Chronicle-Telegram.

The Court: What is that?
The Witness: The Elyria Chronicle-Telegram.
The Court: In Lorain County?
The Witness: Yes.
Q. Is there any daily newspaper that competes with you in the City of Lorain that is published in Lorain County?
A. A daily paper?
Q. A daily paper.
A. That is published in the City of Lorain?
Q. Published anywhere in Lorain County, which competes with you in the City of Lorain.
A. I don't get the distinction between that question and the first one.
Q. Well, the first question you answered was that there were other daily newspapers published in Lorain County that competed with you in Lorain County.
A. Yes, sir.
Q. Now, you misunderstood my question, so rather than argue with you I have asked you the question again. My question is: is there any other competition with you in the City of Lorain from a newspaper published in Lorain [fol. 465] County on a daily basis?
Mr. Fulton: Now, if your Honor please, I object to that.
The Court: What is the objection?

Mr. Fulton: Unless he breaks down "competition". I don't know whether he means general competition or some specific type of competition.
The Court: The Witness may specify. Competition has a well-known accepted meaning. I don't believe it is one of those conclusions that you have referred to. It is generally recognized what competition means. Read the question to the witness, please.

(Question read by reporter.)

A. Yes.
Q. What is the name of the newspaper?
A. Chronicle-Telegram of Elyria.
Q. Is there any newspaper published in Lorain County that competes with you in the City of Lorain, a daily newspaper?
A. I can't answer that question. I don't get the distinction there——

[fol. 466] Q. Don't you remember, Mr. Horvitz, that the testimony has been perfectly clear that the Chronicle-Telegram doesn't circulate in Lorain, the City of Lorain?

A. That doesn't necessarily mean they are not competing. We have competition from the Chronicle-Telegram all around Lorain County.

The Court: He is talking about Lorain.

Q. The City of Lorain.

A. If you mean does the Chronicle-Telegram circulate in Lorain, no, with the exception of 20 or 30 mail copies that come into Lorain.

The Court: I don't believe that is the question. The question is: is there a daily newspaper that competes with the Lorain Journal in the City of Lorain.

Mr. Fulton: That is published in Lorain County.

Mr. Kramer: That is correct.

The Court: Published in Lorain County.

A. I would have to modify that answer——

The Court: You don't need to modify it. That answer can be given without any modification.

[fol. 467] A. We consider them as competition. Now, whether they get any business is another question.

The Court: Proceed, Mr. Kramer.

Mr. Kramer: Yes, sir.

Q. Does the Elyria Chronicle-Telegram solicit advertising from merchants in Lorain?

A. Not so far as I know.

Q. Thank you. Now, is there any weekly newspaper other than the Sunday News——

The Court: Let's get the other part of this first. Does the Elyria Chronicle-Telegram sell any newspapers, daily newspapers, in the City of Lorain?

The Witness: On news stands, no.

Q. And by carrier?

A. By carrier, no.

Q. And by mail?

A. They do sell some by mail.

The Court: How many?

Q. Do you know how many?

A. I would have to refer to that ABC Report for the exact figure.

Mr. Kramer: I believe it is Government's Exhibit 62.

Q. I hand you Government's Exhibit 62 which is the Audit Report for the Chronicle-Telegram and ask you to [fol. 468] tell me if it isn't correct that the number of copies of the Chronicle-Telegram mailed to Lorain, the City of Lorain, each day is 20-something, is it?

A. 28.

The Court: Of a total circulation of how many for the Lorain Journal?

Mr. Kramer: The total circulation for the Lorain Journal in the City of Lorain is approximately 13,000.

The Court: And there are 28 sent in by mail?

The Witness: Of the Elyria paper.

Q. Is there any weekly newspaper other than the Sunday News that is published in Lorain County that competes with you in the City of Lorain?

A. No, not that I know of offhand.

Q. Now, turning to those papers that are circulated in the City of Lorain but not published in Lorain County, I will ask you if any of them compete with you in the publication of local Lorain City advertising?

A. That is, papers outside of Lorain County?

Q. Papers published outside of Lorain County, that compete with you in the City of Lorain on local advertising.

A. None that I know of.

[fol. 469] Q. Do you know of any that compete with you in the publication of local news pertaining to the City of Lorain?

A. Yes.

Q. All right. I want you to name those papers.

A. The Cleveland Plain Dealer, Cleveland News, Cleveland Press.

Q. Thank you, sir. Now, do you know what the circulation of the Cleveland Press is each day in Lorain?

A. I can get that from the ABC reports.

Mr. Kramer: The ABC report for the Cleveland Press I would like to have marked as an exhibit.

(Report referred to marked by Clerk Government's Exhibit 147.)

Q. I hand you Government's Exhibit 147, which purports to be the ABC Report for the Cleveland Press to which you have just referred for the twelve months ending March 31, 1949, and I call your attention to Page 7 thereof and ask you to tell me the total number of copies of the Cleveland Press circulated in the City of Lorain.

A. 571.

Q. 571?

A. Yes, sir.

Mr. Kramer: I offer Government's Exhibit 147 in evi-[fol. 470] dence, if the Court please, unless your Honor thinks that the witness' answer is sufficient for the purpose of the record. I know it is improper to ask your Honor for advice on a matter like this, but we don't want to clutter up the record with documents unnecessarily.

The Court: I think I will let you go ahead in your own way and if there is an objection I will rule on it.

Mr. Kramer: I offer in evidence Government's Exhibit 147.

The Court: It may be received.

Q. I hand you Government's Exhibit 148 which purports to be the ABC Report, as you referred to it, for the Cleveland News for the twelve months ending March 31, 1949, and I call your attention to Page 7 thereof, and ask you to tell me what the circulation as shown by that report for the Cleveland News in the City of Lorain is?

A. 735.

Q. Copies?

A. Yes.

Q. All right. Now, the Cleveland News and the Cleveland Press are afternoon papers are they not, sir?

A. Yes, sir.

[fol. 471] Mr. Kramer: I offer in evidence Government's Exhibit 148.

The Court: It may be received.

Q. The Cleveland Plain Dealer is a morning paper, is it not?

A. Morning and Sunday.

Q. The Lorain Journal is a daily paper not published on Sunday, is that correct?

A. That is correct.

Q. Now, I hand you Government's Exhibit 149 which

purports to be the ABC Report for the Cleveland Plain Dealer, and I ask you to tell me what the total circulation of that paper is according to this report in the City of Lorain?

A. Daily, 4,742, and Sunday, 11,125.

Q. Will you repeat that, please, so everybody gets it?

A. Daily, 4,742, and Sunday, 11,125.

The Court: That's daily how many?

The Witness: Daily 4,742.

The Court: And Sunday?

The Witness: And Sunday 11,125.

Mr. Kramer: I offer in evidence Government's Exhibit 149, if the Court please.

The Court: It may be received. I take it there is no objection to offering it in this fashion?

Mr. Fulton: No.

[fol. 472] The Court: It is a rather odd way of offering these exhibits by cross-examining this witness who, of course, knows nothing definitely about the circulation of any of these newspapers.

Mr. Kramer: If the Court please, it is odd, and I would like to explain why I did it. It doesn't make it any the less odd, but counsel very kindly said he would not contest the Audit Bureau Reports.

The Court: All right.

Mr. Fulton: In fact, I think I used one in my argument.

The Court: The reason I am questioning it, at the time he was referring to a report of his own newspaper and now he is talking about reports of other newspapers, and all he does is read from it and testify as to what it shows.

Mr. Kramer: That's right, your Honor. I agree it is improper. If objected to I would have had to withdraw it.

Your Honor asked me a question as to what Government's Exhibit 119 showed as to the circulation of the Lorain Journal in Lorain.

The Court: Yes.

[fol. 473] Mr. Kramer: The precise figure on the Audit Bureau Report, as adjusted, the adjusted figure is 13,151.

The Court: 13,151?

Mr. Kramer: That is correct, sir.

Q. Now, do you know Mr. Bremer, B-r-e-m-e-r?

A. Yes, sir.
Q. Who is he?
A. The advertising manager of the Lorain Journal.
Q. He filed an affidavit in this case. You remember that, don't you?
A. Yes, sir.
Q. And in that affidavit, do you remember he said that the Lorain Journal reaches 99 per cent of all the families in Lorain?
A. Yes.
Q. And that statement was true, wasn't it?
A. Yes.
Q. To the best of your knowledge?
A. Yes, sir.
Q. And it is still true today, isn't it?
A. Yes, sir.
Q. Are there any other papers that reach 99 per cent of all the homes in Lorain that you now know of?
A. No.

[fols. 474-477] Mr. Kramer: No further examination.
Mr. Fulton: No examination at this time.
The Court: You may step down.

* * * * * * *

[fol. 478] Richard L. Dugan, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Richard L. Dugan.

By Mr. Kramer:

Q. State your name, please.
A. Richard L. Dugan.
Q. Your address?
A. 31788 Lake Road, Avon Lake.
Q. Ohio?
A. Yes, sir.
Q. By whom are you employed?
A. United Press Association.
Q. In what capacity are you employed?

A. Cleveland Bureau manager.

Q. How long have you been the Cleveland Bureau manager of the United Press Association?

A. About five and a half years.

Q. Are you familiar with the manner in which news originating from outside Ohio, as reported by the United Press, is distributed to subscribers within the State of Ohio?

A. I am, yes.

Q. Please describe that process.

A. Well, the United Press is a world-wide news service and we have reporters all over the world, and their re-[fol. 479] ports are sent in to bureaus in all the principal cities in the world, and from there they are edited, processed, put on leased wires to client newspapers and radio stations, and it goes to all of them in the same way, the same form.

Q. How is the news transmitted from the point of origin to the place of final destination?

A. By leased wire, AT&T.

Q. By wire, is that a teletype process?

A. It is.

Q. Do you have samples of what the teletype material looks like that we can exhibit to the Court?

A. Yes, sir. This is the way it comes out on the client's machine.

Q. That's the way it comes out on the client's machine?

A. That's right.

Q. I take it you have branch offices, is that right?

A. We have offices in all the major cities.

Q. What would you call the Cleveland office?

A. One of the major offices.

Q. Let's assume a news story with a Washington date line. It comes from Washington for distribution to subscribers in Ohio, to some city before it gets to the subscriber, presumably, is that right?

A. Well, we have trunk wires that go all over the United [fol. 480] States.

Q. Trunk wires? Is there a trunk wire coming into Cleveland and Columbus offices of the United Press?

A. There are, yes.

Q. And does the news come into the Cleveland and Co-

lumbus offices of the United Press looking like this, or do they look like something else?

A. It looks just about like that. It might be a little longer.

Q. But it is in this kind of an appearance?

A. Same thing.

Q. Do you ever use a tape method?

A. We do.

Q. Will you describe to the Court when the tape method comes into operation?

A. Well, this is a tape (indicating). We have teletype operators who punch the stories beforehand. It saves a lot of time that way.

Q. This is the way the story goes out of Washington?

Mr. Fulton: Objection.

A. That's right, it goes through the transmitter.

Q. And when it arrives, we'll say in the Cleveland office, it is transmitted into something that looks like this first paper you indicated?

A. That's right.

[fol. 481] Q. Now, are any of these national news stories rewritten in the Columbus office of the United Press and transmitted to subscribers in the State of Ohio?

A. No. They may be cut down.

Q. They are reduced in size, you say?

A. That's right.

Q. But not rewritten?

A. That's right.

Q. What about the Cleveland office, would your answer be the same or different?

A. The same.

Q. Generally speaking, how long does a news item originating outside the State of Ohio remain in the Columbus office of the United Press before transmittal to subscribers in the State of Ohio?

A. There is no way of generally speaking, because it depends on the importance of the item. But bulletin stories go right out.

Q. If it is a what?

A. If it is a bulletin. The end of the coal strike, for example.

Q. Supposing it is not too important a story. How long would it remain?

A. It might remain an hour, it might be killed altogether if it was of too little interest in Ohio.

[fol. 482] Q. Would your answer be substantially the same with respect to the Cleveland office?

A. Yes.

Q. Have you ever worked for the Associated Press or the International News Service?

A. No, sir.

Mr. Kramer: That's all.

Cross-examination of Richard L. Dugan.

By Mr. Fulton:

Q. Just as a matter of information to myself, as much as anything else, because it won't be a very rigid cross-examination, this tape, of course, comes in what to me appears to be a code?

A. It is in a way.

Q. Is it a telegraphic code?

A. Each series of holes there is one letter which is punched by the operator on the teletype machine. It comes off of the machine——

Mr. Kramer: I object to the question. I think Mr. Fulton misconceived what Mr. Dugan stated. I would like to have his question read.

(Question read by reporter.)

Mr. Kramer: My recollection is it went out of Wash-[fol. 483] ington like that but came in on this other sheet of paper.

Mr. Fulton: That's what I'm trying to find out.

The Court: He may answer.

Mr. Fulton: I have just started on the route.

Q. In other words, this is sort of a code?

A. We have these electrical machines that transmit that into letters on this page (indicating).

Q. And where is that done?

A. As soon as it is sent out, it goes out and it is transmitted in this manner on the teletype.

Q. When it is received in Cleveland or Columbus, how does it come, in that code form?

A. No.

Q. In the other form?

A. As on that page (indicating).

Q. You have said, as I understood it, that after it comes to Columbus or Cleveland some of the news is used and some is not used?

A. That is right.

Q. Where is the determination of that made?

A. Usually the Bureau manager determines that. He decides whether the Ohio people want it.

Q. In other words, you are the Bureau manager here? [fol. 484] A. In Cleveland.

Q. So that in that hypothetical situation you would determine whether an item of news should be further transmitted to your clients?

A. That's right, in the State of Ohio.

Q. Sometimes you say that takes as much as an hour to determine whether to send it out or not?

A. No, I didn't say that. Sometimes a story may hang on an hour because it is not of sufficient interest, because there is better news ahead of that.

Q. You also said that sometimes the story is cut down. Who does that?

A. That would be what we call the wire filer who takes the news off the trunk lines and puts it on the State wires.

Q. And that would be done by that man under whose direction, the manager again?

A. The manager of each Bureau.

Q. That is, if a story is cut down at your branch here it is done under your supervision?

A. That's right.

Q. And the cutting down is made before the retransmission to the member?

A. That's right.

Mr. Fulton: That is all.

Mr. Kramer: That is all.

[fol. 485] The Court: Now, the bulletin news, Mr. Dugan, is that cut down?

The Witness: The bulletin stories?

The Court: The bulletin stories.

The Witness: No, ordinarily it wouldn't be. It would be to the interest of the whole country.

The Court: That is not cut down, and that goes out immediately?

The Witness: Yes, as soon as they get it they relay it on the State wire.

The Court: And it is news of lesser importance, however, that is cut down?

The Witness: That's right, depending on the judgment of the man in the Bureau.

The Court: By cutting down, what do you mean? Is it re-edited or cut down, is a portion of it deleted?

The Witness: Just deleted. It is not re-edited at all.

The Court: It is not re-edited?

The Witness: No, sir.

The Court: So that part of it is sometimes retransmitted?

The Witness: That's right.

[fol. 486] The Court: But bulletin news goes out as it is?

The Witness: That's right.

The Court: And immediately?

The Witness: Yes.

By Mr. Fulton:

Q. What do you mean by bulletin news?

A. Well, the example I just gave you there, a couple of days ago the end of the coal strike. Washington sent a bulletin that the coal strike was over. Columbus would get that and would transmit it immediately on the State wires. Those are items of interest to the whole country.

Q. I think I understood you correctly to say that ordinarily bulletin news is not cut down or changed in any way. Did I understand you correctly when you said "ordinarily"? My question is to you.

A. Me?

Q. Yes.

A. No, I said a bulletin would not be cut down. I don't mean that exactly. There are an awful lot of bulletin stories, and one might be a bulletin story to the West Coast of very much interest to San Francisco and Los Angeles. We would probably put it on the State wire, but not completely because it wouldn't be of as much importance, or of as much interest around this part of the country. They might cut out and transmit half of it.

[fols. 487-501] Q. So there are instances where bulletin stories are cut down?

A. There are instances where bulletin stories are cut down, but not a story of national interest to everybody.

Q. So that when it is cut down you have to consider the effect it has on the general type of story, that's right isn't it?

A. Yes, but the stories are written up so that the bottom half can be cut off. The main news is on the top portion.

Q. But you still have to consider the text?

A. That's right.

Q. And in a sense that is a sort of editing, isn't it?

The Court: He said it wasn't re-edited, Mr. Fulton.

A. Its wording is not changed.

Q. I asked if it was a form of editing.

A. There is more detail on the end of the story which sometimes are left out which the papers in Ohio wouldn't have room to print.

Mr. Fulton: That's all.

Mr. Kramer: Thank you, that's all.

* * * * * * *

[fol. 502] Robert Tebbel, called as a witness on behalf of plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Robert Tebbel.

By Mr. Kramer:

Q. Please state your name.

A. Robert Tebbel.

Q. Please spell that?

A. T-e-b-b-e-l.

Q. What is your address?

A. 1532 Ansel Road.

Q. Where?

A. Cleveland, Ohio.

Q. Where do you work?

A. At the Kroger Company.

Q. In Cleveland?

A. Yes, sir.
Q. What is their address?
A. 5700 Truscon Avenue.
Q. Cleveland, Ohio?
A. That's right.
Q. What is your present job with the Kroger Company?
A. I work with the grocery merchandiser in charge of grocery sales.
[fol. 503] Q. What was your job with the Kroger Company in the month of December, 1948?
A. In charge of special promotion.
Q. Were you ever advertising manager?
A. Yes, I was.
Q. When were you advertising manager?
A. During the early part of the fall 1948.
Q. Did you have a successor?
A. That's right.
Q. What was his name?
A. Don Sterling.
Q. Did you have occasion to train him in his job?
A. That's right.
Q. Does the Kroger Company advertise in the Lorain Journal?
A. Yes, sir.
Q. Did it advertise at all times since October, 1948 in the Lorain Journal?
A. There was one week when we weren't.
Q. Other than that one week it did?
A. That's right.
Q. Did you have an advertising contract with the Lorain Journal in November and December, 1948?
A. We did.

Mr. Kramer: If the Court please, I would like to inquire of the Clerk whether or not he has the affidavits in the [fol. 504] court files in this case? Attached to one of them is a document I propose to offer in evidence.

Mr. Fulton: It is attached to the motion for temporary injunction.

Q. Did the Kroger Company ever consider advertising over the radio station WEOL?
A. Yes, we did.

Q. What if anything did you do to secure advertising time on WEOL?

A. We went out to the radio station WEOL and signed a contract.

Q. Do you remember the approximate date of the contract?

A. In the early part of December.

Q. Of 1948?

A. 1948.

Q. Calling your attention to the month of December, 1948, I will ask you if you had any conversation with any officers or employees of the Lorain Journal relative to the desirability of advertising over Station WEOL?

A. Not prior to the advertising.

Q. Not prior to what?

A. Not prior to advertising over WEOL.

Q. Well, subsequent to advertising did you have any conversation?

[fol. 505] A. Yes.

Q. Do you remember about the time you had the first such conversation?

A. It was just prior to the 25th of December, sometime in that week.

Q. Where was this conversation held?

A. In the office of the Lorain Journal.

Q. Who was present?

A. Mr. Self, Mr. Sterling and myself.

Q. No one else?

A. No one else.

Q. And it was just prior to Christmas, you think, 1948?

A. That's right.

Q. Did you arrange the conference or did Mr. Self arrange the conference?

A. It was arranged in a telephone call. I can't remember whether I placed the call or he did.

Q. State the substance of what you and Mr. Self said to each other?

A. We mentioned that there was some question we had heard about our advertising over WEOL and we were told at that time that due to the effort spent by the Lorain Journal in building the Lorain marketing area as such they thought that it was undesirable for us to advertise

over the radio station in Elyria and mention our Lorain [fol. 506] stores. And at that time they asked for some assurance that we would not advertise over the radio station in the future to advertise the Lorain stores, and we told him that at that time we could give no such assurance.

Q. And you parted?

A. That's right.

Q. And you went back to your office in the Kroger Company?

A. Yes.

Q. Now, what was the next thing that happened in this story, Mr. Tebbel?

A. Just after Christmas, two or three days, I believe, we got a letter stating that our advertising contract with the Journal had been cancelled.

Q. You received a letter?

A. That's right.

Q. That is all I want you to talk about until I show you the document. I hand you Plaintiff's Exhibit 150 for identification and ask you to tell me whether or not that is the letter which you received to which you just referred in your testimony?

A. (After examining same.) That's right.

Mr. Kramer: I would like to offer Government's Exhibit 150 in evidence and read it to the Court.

The Court: It may be received.

[fol. 507] Mr. Kramer: (Reading.)

> "Mr. Robert Tebbel, Kroger Company, East 55th Street and Truscon Avenue, Cleveland, Ohio, December 27, 1948. Gentlemen:
>
> You are hereby notified that your advertising contract dated April 8, 1948, is cancelled thirty days from this date.
>
> Sincerely. Lorain Journal. D. P. Self, Business Manager."

Q. I now hand you Government's Exhibit 151 for identification which purports to be an advertising contract with the Lorain Journal, signed by the Kroger Company. I will ask you to tell me if it is what it purports to be, namely,

a contract between the Kroger Company and the Lorain Journal for advertising?

A. (After examining same.) It is.

Q. Yes, it is, is that your answer?

A. Yes, it is.

Mr. Kramer: I offer Government's Exhibit 151 in evidence, if the Court please.

The Court: It may be received.

Q. Now, is this the contract which you understood was cancelled as the result of receiving Government's Exhibit 151 thirty days from the date thereof?

A. Yes, it is.

[fol. 508] The Court: What is the duration of that contract?

The Witness: One year from April 8, 1948.

Q. Now, Mr. Tebbel, since, following the receipt of this letter on December 27, Government's Exhibit 150, from Mr. Self, did you have any further conversation with him?

A. Yes, we did.

Q. You say "we". Who was present and approximately when was the conversation held?

A. Mr. Sanning.

Q. Spell that.

A. S-a-n-n-i-n-g, the advertising director of the Kroger Company.

Q. Where is his ·

A. Cincinnati.

Q. Who else was present?

A. Mr. A. W. Metzger.

Q. Spell that.

A. M-e-t-z-g-e-r.

Q. And who was he?

A. He is branch manager of the Kroger Company in Cleveland.

Q. He is the top man in Cleveland?

A. That's right.

Q. Go ahead. Who else was present?

A. Mr. Sterling and myself.

[fol. 509] Q. Where was the conference held?

A. In the office of the Lorain Journal.

Q. In Lorain, Ohio?

A. Yes.

Q. Do you know approximately when after December 27, 1948, it was held, before or after the first of the year?

A. It was right around the first of the year.

Q. State what was said by Mr. Self and what you said to Mr. Self.

A. The conversation was almost the same as it was when Mr. Sterling and I had had our previous meeting. He further went on to say that the trading area had been established in Lorain by the Journal and he felt that it was not a good thing for us to advertise in the Elyria Station WEOL, advertising our stores in Lorain. At that time Mr. Sanning told him, he asked for a letter to state that we would not use the radio station to advertise those stores or to advertise those stores at any future date, and Mr. Sanning told him at that time that we were unable to commit the Kroger Company to any future action whatsoever; and that ended the conversation.

Q. Following this last conversation with Mr. Self, I will ask you whether or not you cancelled your radio advertising contract with Station WEOL, and by "you" I mean the Kroger Company?

[fol. 510] A. That's right.

Q. And you returned to advertising in the Journal, is that right?

A. That's right.

Q. And you have advertised there ever since, is that right?

A. That's right.

Q. Why did you choose the Journal rather than the radio station?

Mr. Fulton: I object to that.

The Court: Sustained.

Q. Did the Kroger Company consider advertising its Lorain store in the Cleveland papers after your conversation with Mr. Self?

A. No.

Q. What were the reasons that led you not to advertise your Lorain store in the Cleveland Plain Dealer, for instance?

A. At the time we didn't feel as though we could get

as good local coverage of the market as we could with the Lorain Journal.

Q. Do you also advertise, does the Kroger Company also advertise in the Elyria Chronicle-Telegram?

A. To my knowledge we do; we did at the time.

Q. Did your advertisement in the Elyria Chronicle-Telegram mention the address of your Lorain store?

A. No, not to my knowledge.

[fol. 511] Q. Did your advertisement in the Lorain Journal of your Lorain store at that time also mention your Elyria store?

A. I don't remember.

Mr. Kramer: No further questions.

Cross-examination of Robert Tebbel.

By Mr. Fulton:

Q. In other words, you did have a store in Elyria and had a store also in Lorain?

A. Yes.

The Court: You didn't read that letter you said you were going to read.

Mr. Kramer: I am sorry. May I read it?

(Reading) "Mr. Robert Tebbel, Kroger Company, East 55th Street and Truscon Avenue, Cleveland, Ohio, December 27, 1948. Gentlemen: You are hereby notified that your advertising contract dated April 8, 1948 is cancelled thirty days from this date.

Sincerely, The Lorain Journal, D. P. Self."

By Mr. Fulton:

Q. This contract that your store had, Exhibit 151, contains this provision: "This contract can be cancelled by the publisher upon thirty days written notice": does it not?

A. That's right.

[fol. 512] Q. Did I understand you correctly to say that after one of these conversations your store cancelled its contract with the radio station?

A. Our contract with the radio station was cancelled about that time, although I don't remember exactly the

terms of the radio contract, but it ran out at that time. Either it ran out or was cancelled about that time, I don't remember the exact date.

Q. That was the thing I want to get clear. I am reading a copy of your affidavit; I can assure you it is a copy; and it contains this language: "The Kroger Company, however, did not advertise products for sale in its Lorain store on Station WEOL after our contract with them expired". Now, when you gave that affidavit on the 20th of July, 1949, that is what you meant to imply?

A. That's right.

Q. This copy I have, and I assume the original has, right opposite that statement "After that our contract with them expired" has the initials "RET". Those are your initials?

A. That's right.

Mr. Fulton: That's all.

Mr. Kramer: No further questions unless the Court has any.

The Court: We will take a fifteen minutes recess.

[fol. 513] Paul E. Driscol, called as a witness on behalf of plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Paul E. Driscol.

By Mr. Kramer:

Q. What is your name?
A. Paul E. Driscol.
Q. Will you spell the last name?
A. D-r-i-s-c-o-l.
Q. Where do you live, Mr. Driscol?
A. Lorain, Ohio.
Q. What is your business?
A. I am in the music business.
Q. How long have you been in the music business?
A. Eight years.
Q. Where do you have stores?
A. I have a store in Lorain and I have a store in Elyria.

Q. And are you familiar with the store in Lorain called Smith & Gerhardt?

A. I know of the store, yes.

Q. Is it a department store?

A. Yes, sir.

Q. Do you advertise in the Lorain Journal?

A. Yes, sir.

[fol. 514] Q. Calling your attention to 1948 and '49 I will ask you if you advertised in the Lorain Journal in each of those years?

A. Yes, sir.

Q. Did you ever advertise on WEOL?

A. Yes, sir.

Q. Did you have an advertising contract with WEOL?

A. Yes, sir.

Q. Did you have an advertising contract with the Lorain Journal in October, 1948?

A. Yes, sir.

Q. What was the date, approximately, of your contract with radio station WEOL?

A. Approximately September or October, 1948.

Q. Did you ever advertise your Lorain store as distinguished from your Elyria store over radio station WEOL?

A. We advertised both stores, the address of both stores.

Q. And you did have a contract with WEOL?

A. Yes, sir.

Q. Since October, 1948, have you had any conversation with any persons known to you to be officers or employees of the Lorain Journal regarding the desirability of advertising over radio station WEOL?

A. What was the date again?

Q. Since and including October, 1948?

[fol. 515] A. Yes, sir.

Q. Do you remember having more than one?

A. Yes, sir.

Q. Where did the conversations occur?

A. In my Lorain store.

Q. And who was present besides yourself?

A. A representative of the Journal.

Q. Who was he with whom you had the conversation, in other words?

A. Mr. James Grills.

Q. Spelled, you think, at least G-r-i-l-l-s?

A. I believe so.

Q. Did you have any conversation with any other representative of the Lorain Journal?

A. There was another representative along but he didn't enter into the conversation.

Q. State the substance of what Mr. Grills said to you and what you said to him in your store in Lorain in 1948.

A. Mr. Grills informed me that it would be impossible for the Journal to continue my advertising if I continued advertising over WEOL.

Q. What did you say to Mr. Grills in response to that statement by him?

A. I merely stated that I was very much surprised, that I couldn't understand the arrangement, I didn't see how [fol. 516] advertising over WEOL had anything to do with my newspaper advertising because primarily our advertising was of an educational nature, to students, youngsters learning to play instruments.

Q. Did Mr. Grills make any reply to that that you now remember?

A. No, he didn't. He just stated the policy of the Journal.

Q. Following the conversation with the employees of the Lorain Journal did you discontinue advertising your Lorain store over the radio station WEOL?

A. Yes, sir.

Q. Your Journal advertising contract remained in force at all times, is that it?

A. Yes, sir.

Q. It was never cancelled?

A. No, sir.

Mr. Kramer: No further questions, Mr. Driscol, unless the Court has any.

Mr. Fulton: No cross-examination.

By the Court:

Q. Mr. Driscol, did you wish to advertise over WEOL as well as in the Journal?

A. Yes, sir.

Q. And did you so express your desire to the representative of the Lorain Journal?
[fol. 517] A. Yes, sir.
Q. And what did he say to that?
A. He said it would be impossible to advertise in the Lorain Journal if I did advertise over WEOL.
Q. And what reason did he give for it?
A. He gave no reason, just the policy of the Journal.
The Court: All right.

Cross-examination of Paul E. Driscol.

By Mr. Fulton:

Q. That does suggest a question to me. Did Mr. Grills say to you under the circumstances you might try out the radio and see how it worked, give it a thorough trial?
A. Would you please repeat that question?
Q. Did Mr. Grills say to you, "Well, Mr. Driscol, why don't you use the radio station and give it a good thorough trial"?
A. It is possible that he did. I don't recall. However, I wouldn't consider that because I consider my newspaper advertising very important.
Q. Be that as it may, I want to ask you, didn't he in substance or effect say to you, "Why don't you give the radio a complete and thorough trial?" I am not asking you whether those were the exact words but didn't he in substance and effect tell you that?
A. It is possible that he did say that but that wouldn't be [fol. 518] my policy as far as advertising is concerned.
Q. I am not asking you about your policy but whether or not he did say that?
The Court: He answered that and said he may have said it but it wasn't his policy.
Mr. Fulton: That is all.
The Court: Was that the reason that was assigned by Mr. Grills as the reason why you couldn't advertise in the Journal?
The Witness: Mr. Grills stated to me I couldn't continue to advertise my Lorain store over the air and still advertise in the Journal. That settled the question for me.

Mr. Kramer: Step down, please, that will be all.

[fol. 519] SUMNER C. MILLER, a witness called by the plaintiff, being first duly sworn, testified as follows:

Direct examination of Sumner C. Miller.

By Mr. Kramer:

Q. What is your name?
A. Sumner Miller.
Q. Any initial?
A. C.
Q. Where do you live?
A. Sandusky.
Q. Sandusky, Ohio?
A. Yes, sir.
Q. Where do you work?
A. The B. F. Goodrich Company, Lorain.
Q. Can you speak a little louder?
A. The B.F. Goodrich Company in Lorain.
Q. Ohio?
A. Yes, sir.
Q. You commute every day?
A. That's right.
Q. How long have you been in that Lorain store?
A. Since the 1st of October, 1948.
Q. What is your position there now?
A. Manager of the store.
Q. Have you been manager of the store at all times?
A. Since October, 1948.

[fol. 520] Q. As long as you have been manager has the B. F. Goodrich store in Lorain advertised its Lorain store in the Lorain Journal?

A. Yes, sir.

Q. Did you have an advertising contract with the Journal?

A. Yes, sir.

Q. Did you have one in December, 1948?

A. Yes, sir.

Q. Prior to Christmas 1948 I will ask you to tell me whether or not you had any conversation with any person connected with the Lorain Journal about the desirability of advertising over radio station WEOL relative to your Lorain store?

A. Yes, sir.
Q. With whom did you have those conversations?
A. Mr. Stillman.
Q. Where was the conversation held?
A. In our store.
Q. In Lorain?
A. Yes, sir.
Q. Who was present besides Mr. Stillman and yourself?
The Court: Let's not go quite so fast. Who is Mr. Stillman; what position did he hold? What did he tell him about it? Develop it so I get the whole content of the conversation instead of a conclusion.
[fol. 521] Mr. Kramer: I thank you. I apologize.
Q. Do you know what Mr. Stillman's position was with the Lorain Journal in 1948?
A. He was in the advertising department.
Q. He was in the advertising department?
A. Yes, sir.
The Court: Had he been the man you had been in contact with in connection with your advertising?
The Witness: Yes.
The Court: And for how long had you had contact with him prior to the conversation?
The Witness: I met him the 1st of October when I came to the store.
Q. You testified that you had a conversation with Mr. Stillman in your store in December, 1948 about advertising over WEOL?
A. Yes, sir.
Q. And was there any one else present besides you and Mr. Stillman?
A. As near as I can remember, my other employees.
Q. Were also present?
A. Yes, sir.
Q. State the substance of the conversation you had with Mr. Stillman, to the best of your recollection.
The Court: What did he say to him and what did the other man say to you? Let's develop it all.
[fol. 522] A. My supervisor called me in regard to advertising on the radio station on a fifty fifty basis with the Elyria store.
Q. Speak a little louder.

A. And I talked to Mr. Stillman about it and he told me that if I advertised on the radio I could not advertise in the Lorain Journal, that my contract would be broken.

Q. What did you say to Mr. Stillman after that?

A. I said nothing further to him. I contacted my supervisor and informed him under that set-up we couldn't advertise on the radio station.

Q. Following your conversation with the Journal representative that you have just described, did you ever advertise your Lorain store either in the Cleveland Plain Dealer or any other Cleveland paper?

A. No, sir.

Q. Did you ever consider doing that?

A. No, sir.

Q. State the reasons why you didn't consider doing it.

A. Well, we only advertised in the local paper where our store is located.

Q. Do you advertise your Elyria store over radio station WEOL now?

A. That I don't know.

Q. Do you remember if the Elyria store was ever adver-
[fol. 523] tised over WEOL, of the B. F. Goodrich Company store?

A. I believe it was at that time.

Q. Did you ever in your advertisements of your Elyria store over WEOL in 1948 also mention in the advertisement your Lorain store?

A. No, sir.

Q. You at no time advertised the Lorain store over radio station WEOL?

A. That's right.

Mr. Kramer: No further questions unless the Court has any.

Mr. Fulton: I think of none just now. That is all. No examination.

By the Court:

Q. Now, Mr. Miller, the products, the goods that are sold in your Lorain store, are shipped from where?

A. From Cleveland and Akron.

Q. Any goods sold in that store shipped from outside of Akron or Cleveland?

A. Well, some of our tires come from our other rubber plants.

Q. Where are they located?

A. We have one in Oaks, Pennsylvania.

Q. And where else?

A. And Miami, Oklahoma, and Tuscaloosa, Oklahoma.

Q. And that store in Lorain displays those tires, does it?

[fol. 524] That's right, sir.

Q. And they are sold in that store?

A. Yes, sir.

Q. And have been sold in that store since you have been connected with the store?

A. That's right.

The Court: All right.

Cross-examination of Sumner C. Miller.

By Mr. Fulton:

Q. Just one question. Those tires you say came in from some point out of Ohio to your Lorain store directly?

A. Directly, but not in all cases.

Q. In some cases they came by—I will call it for want of a better expression—an indirect route; that is to say, to Akron first, did they not?

A. Yes, that is possible, sir.

Q. Now, whether they came from out of the state directly to your Lorain store or from out of the state from Akron and thence in the Lorain store, they came to the Lorain store and they were put on the shelves or some place for sale; is that right?

A. That's right.

Q. And sold from the shelf or from the floor, as you would have them there for sale?

A. That's right.

[fol. 525] Mr. Fulton: That's all.

The Court: Did you advertise tires in the Lorain Journal?

The Witness: Yes, sir.

The Court: Did you advertise tires, among other things, over WEOL while you had the contract or intended to have a contract?

The Witness: No, sir.

The Court: You did not. You never advertised over WEOL?

The Witness: No, sir.

The Court: All right.

Mr. Kramer: If the court please, my associates will examine the great bulk of the remainder of the advertisers.

[fol. 526] HERMAN HOLBROOK, being called as a witness by plaintiff and first duly sworn, testified as follows:

Direct examination.

By Mr. Rashid:

Q. Please state your name, sir.
A. My name is Herman Holbrook.
Q. How do you spell the last name?
A. H-o-l-b-r-o-o-k.
Q. What is your home address?
A. In Lorain, Ohio.
Q. In what business are you engaged?
A. Retail home appliances.
Q. Where is your place of business located?
A. I have two. At 711 Broadway in Lorain, and 228 Middle Avenue in Elyria.
Q. How long have you been engaged in that business?
A. I have been associated with the firm since 1935. It was started by my father in 1926.
Q. Do you advertise in the Lorain Journal?
A. I do.
Q. Calling your attention to the latter part of 1948, I will ask you whether or not you had an advertising contract with the Lorain Journal at that time?
A. I did. I had two: one for the classified advertising, and one for display advertising.
Q. Did you ever consider advertising over station WEOL?
A. Yes, I did.
[fol. 527] Q. When did you first consider it?
A. After I heard there was to be such a station.
Q. Approximately when was that?
A. That was in the summer of 1948.

Q. Did you enter into an advertising contract with station WEOL?

A. I did.

Q. What time did you enter into that contract?

A. That was in the early part of October.

Q. Of which year?

A. Of 1948.

Q. Prior to the time that you entered into this contract with radio station WEOL did you have any conversation with any employees of the Lorain Journal relating to the desirability of advertising over station WEOL?

A. Yes, I did.

Q. When was this conversation?

A. In the middle of the summer, I would say, in about the latter part of July or the first of August.

Q. Of what year?

A. Of 1948.

Q. And where was this conversation held?

A. It was held in my home.

Q. And with whom did you have the conversation?

A. With a Mr. James Grills.

[fol. 528] Q. Do you know what position he had with the Lorain Journal at that time?

A. He was an advertising solicitor.

Q. Is he the gentleman that regularly called upon you for advertising?

A. That's right.

Q. Will you please tell the court what you said to Mr. Grills and what he said to you at this conversation?

A. We had been discussing the possibility of the radio station becoming a reality. I had mentioned my desire to try the radio as a means of advertising my business, feeling it might be advantageous, something I had never had occasion to use before, and we discussed various angles of direct or radio advertising with newspaper advertising.

Q. What exactly was said to you and what did you say to Mr. Grills?

A. I don't recall his exact words, but he did, in essence, say that in all probability my entering into such a contract with the radio station might have some effect on my newspaper advertising contract.

Q. What did you say to him in reply?

A. I said to him that I felt that there should be, as far

as I was concerned, there was no conflict of the two types of advertising, I felt both were generally used throughout the country and I felt I wanted to experiment, if you please, [fol. 529] to see if it would be helpful in my own business.

Q. Was there anything further said at that time, at that conversation?

A. As I recall that essentially covers the conversation.

Q. After you began to advertise over radio station WEOL, I will ask you whether or not the Lorain Journal cancelled your advertising contract with it?

A. They did.

Q. I hand you a document marked Government's Exhibit 152 for identification and ask you whether or not that is the letter you received?

A. It appears to be.

Mr. Rashid: I offer Government's Exhibit 152 in evidence, your Honor.

The Court: It may be received.

Q. Since you received this letter on October 25, 1948, have you had any other conversations with any employees of the Lorain Journal relating to the desirability of advertising over radio station WEOL?

A. Yes, I did.

Q. With whom did you have the conversation?

A. With Mr. Self, who is the manager, business manager, at the time.

Q. Where was this conversation had?

[fol. 530] A. It was in his office.

Q. And when was this conversation held?

A. I think the day following the receipt of the letter, which was dated October 25, 1948.

Q. Will you please tell the court what was said to Mr. Self and what he said to you at that time?

A. My purpose in asking for an interview with him was to find out the reason, the basis for the cancellation of my contract, and I called him on the phone and made an appointment to meet him in his office, at which time I asked him the purpose or the reason for the cancellation. I was advised at that time it was because I had gone on the—had entered into a contract with the radio station and that they felt that they were justified in cancelling my contract for that reason. I was further advised that if I would

advertise only the name of my Elyria store and not use in any way the name or address of the Lorain store, that my newspaper advertising contract could be reinstated.

Q. Was there anything further said at that conversation?

A. Yes, we discussed at some length the various phases of the various types of advertising, the comparative merits of newspaper advertising as compared with radio advertising, and my opinions weren't changed any that I had previously formed. In so far as I have been able to deter-

[fol. 531] mine, there is a very definite place for both types of advertising in any business; at least as far as my own business is concerned, that is what I am interested with most.

Q. Following this conversation with Mr. Self, I will ask you whether or not you discontinued your advertising over radio station WEOL?

A. Yes, I did.

Q. And following the discontinuance of your radio advertising, did you attempt to secure another advertising contract with the Lorain Journal?

A. I did.

Q. What were the results of any such attempt on your part?

A. I had occasion to inform them that my radio contract had expired and I requested a contract for newspaper advertising, and it was granted to me.

Mr. Rashid: That is all.

Cross-examination.

By Mr. Fulton:

Q. In other words, you used your radio contract until it expired and then came back?

A. That's right.

Q. Now, your business I didn't get.

A. I operate a retail appliance store, home appliances.

Q. All sorts of home appliances?

[fol. 532] A. That's right.

Q. Electric appliances, toasters, refrigerators?

A. That's right.

The Court: Where do you get your merchandise, Mr. Holbrook?

A. The large part of it is shipped to me from Newton, Iowa.

Mr. Fulton: May I have the record show an objection to the question?

The Court: Yes. Objection to the court's question. It will be noted and the court will ask it anyway.

Mr. Fulton: I think your Honor knows my point.

The Court: I understand your point, but I want to know where he gets his merchandise. I fully realize the legal consequences and significance of it, as well. I still want to know the extent of the business of these people in Lorain, with whom these dealings are taking place, and I want to know whether they are simply engaged in local advertising of local products.

The Witness: A large part of my merchandise, probably ninety per cent of my possible sales volume merchandise is shipped to me from Newton, Iowa.

The Court: What did your merchandise consist of—refrigerators?

The Witness: Primarily home laundry equipment, iron-[fol. 533] ers, and of course we do have refrigerators and home freezers, gas ranges, electric ranges.

The Court: Did you advertise those products in the Lorain Journal?

The Witness: Yes, sir.

The Court: Did you advertise those products over the radio station while you advertised over the radio station?

The Witness: Yes, sir.

The Court: All right.

Mr. Rashid: That is all.

[fol. 534] Joseph Brochu, being called as a witness by the plaintiff and first duly sworn, testified as follows:

Direct examination of Joseph Brochu.

By Mr. Rashid:

Q. Will you please state your name?
A. Joseph Brochu.
Q. How do you spell it?
A. B-r-o-c-h-u.

Q. What is your home address?
A. 1237 Fifth Street, Lorain, Ohio.
Q. In what business are you engaged?
A. I am in the metal awning business.
Q. How long have you been engaged in that business?
A. Approximately four years.
Q. Where is your place of business located?
A. In Lorain, Ohio, at 629 Broadway.
Q. Do you advertise in the Lorain Journal?
A. I do.
Q. Calling your attention to the early part of 1949, I will ask you whether or not you had an advertising contract with the Lorain Journal at that time.
A. I did.
Q. Did you ever consider advertising over station WEOL?
A. Yes, I did.
[fol. 535] Q. When did you first consider advertising over WEOL?
A. In January—in December, '48 and January of '49.
Q. Did you ever enter into a contract with WEOL for advertising time?
A. Yes, I did, in January '49.
Q. Prior to the time you began advertising over station WEOL did you have any conversation with any employees of the Lorain Journal relating to the desirability of advertising over WEOL?
A. A few days prior to my entering into this contract with WEOL Elyria station I mentioned to Mr. Stillman, who was handling my advertising account at the Journal that I intended to go on the air.
Q. Where was this conversation held?
A. I can't recall if it was in my or in the office of the Lorain Journal; it was one or the other.
Q. Was any one present other than yourself and Mr. Stillman?
A. I don't recall anyone.
Q. Will you please state what you said to Mr. Stillman and what he said to you at that time?
A. I mentioned that I had signed a contract with the station WEOL to coordinate with my newspaper advertising, and he advised me that they couldn't continue to accept my newspaper advertising if I entered into a radio

advertising contract, and that they would be forced to [fol. 536] cancel my written contract with the Journal for advertising.

Q. Was anything else said in that conversation?

A. I asked why this should take place and he said as far as he knew it was the policy of the Journal at the time to refuse any advertising or to accept any advertising from firms who went on the air.

Q. Was anything else said?

A. Well, it was just general conversation as to pros and cons of this, and more or less general. I told him that I intended to go ahead with my radio in order to get more coverage, cover more population, because I actually am a member of a national organization for the sale of these metal awnings. We cover about 33 or 34 states. We do considerable national advertising in radio magazines, newspapers, direct mail, and we were seeking more distribution for our products. At that time I was franchise dealer for Lorain County as well as Medina County, and I felt that I could increase my sales and probably reduce the retail cost to my customers by getting more volume. That was my purpose at the time.

Q. What did Mr. Stillman say to that?

A. Merely advised me that the Journal would not accept any further advertising during the time that I was doing radio advertising.

[fol. 537] Q. After you began to advertise on radio station WEOL, I will ask you whether or not the Lorain Journal cancelled your advertising contract with it?

A. They wrote me a letter a few days after——

Q. Just answer yes or no.

A. Yes, sir.

Q. Now, I hand you a document marked Government's Exhibit 153 for identification, and ask you whether or not that is a copy of the letter you received from the Lorain Journal?

A. That is it, yes, sir.

Mr. Rashid: I offer Government's Exhibit 153 in evidence, your Honor.

The Court: It may be received.

Mr. Rashid: Would your Honor care to have me read these letters?

The Court: No, I just read this letter.

Q. Following the receipt of this letter, Government's Exhibit 153, did you have any other conversation with employees of the Lorain Journal relating to your advertising over station WEOL?

A. Yes, I did.

Q. With whom did you have the conversation?

A. Once or twice again with Mr. Stillman and once with a Mr. Bremer, who was also in the advertising department [fol. 538] of the Lorain Journal.

Q. Referring to the conversation with Mr. Stillman, first, when did that occur?

A. That was shortly after I received notice of cancellation of my contract.

Q. About how long after would you say?

A. Within three or four days.

Q. And where was this conversation held?

A. On the telephone. The first conversation on the telephone.

Q. Had you ever spoken to Mr. Stillman on the telephone before this time?

A. Oh, I ordinarily gave him my advertising instructions weekly or semi-weekly, whenever I had a change of ad, and it was customary for that to be done on the telephone, although occasionally he did drop into my office.

Q. About how frequently had you spoken to him on the telephone before this particular instance?

A. Oh, at least once a week.

Q. Then you would recognize his voice if you heard it?

A. Definitely.

Q. And what did you say to Mr. Stillman and what did Mr. Stillman say to you in this particular conversation?

A. I referred to the cancellation notice that I had received from the Journal and I asked him for an explanation. I told him that my company could not understand [fol. 539] why we should be eliminated from any method of advertising or any medium of advertising that we selected because it was the policy of the Koolvent Metal Awning Corporation of America to have a number of advertising mediums, such as radio, newspapers, and magazines, and that my company had requested me to obtain a written explanation for this abrupt cancellation that was received.

Q. And what did Mr. Stillman say to you?

A. He said that the Journal would not do that; that they had stated what they had to say and that was all.

Q. Was there any other——

The Court: I didn't get that. He said what?

The Witness: That the Journal had notified me and that was the only notification or explanation that I would be likely to receive.

The Court: No other explanation other than the letter?

The Witness: Yes, sir.

Q. You referred to a conversation also with Mr. Bremer. Who was Mr. Bremer at the time?

A. Mr. Bremer was a member of the advertising department of the Lorain Journal with whom I had had advertising business prior to Mr. Stillman's taking over the account of my firm.

Q. And where was this conversation with Mr. Bremer held?

A. On Broadway in Lorain, just outside of my office.

[fol. 540] Q. On the street in Lorain?

A. On the street in Lorain.

Q. Approximately when was this conversation?

A. Oh, that was within ten days or two weeks of the cancellation. I happened to be coming from lunch, and Mr. Bremer was walking up the street, and I mentioned this to him, and his general conversation was that he felt that the policy of the Journal was for the good of the Lorain merchants as a whole, and that was why they were doing that. He used the words that it was for the protection of the merchants that they were following this policy.

Q. Was there anything else said between you and Mr. Bremer on this occasion?

A. Well, we discussed the coverage of the Journal, the paid circulation, and I pointed out that a good many locations where I was seeking business was not covered by the Journal, and I thought that I would try the radio method of advertising to see if I could not reach a larger population and, therefore, endeavor to increase my business. Mr. Bremer advised then or expressed the opinion that the Lorain Journal was well read, which I agreed on, and that a lot of people read the Journal, or any newspaper as far as that goes, without actually buying it. But I didn't feel

we could reach the outlying territories sufficiently through the newspaper, and therefore, my decision to use the [fol. 541] radio.

Q. Following these conversations with Mr. Stillman and Mr. Bremer of the Lorain Journal, I ask you whether or not you discontinued your advertising over station WEOL?

A. I did discontinue it.

Q. After you discontinued your advertising on station WEOL, did you ever attempt to secure another advertising contract with the Lorain Journal?

A. Yes, I did, in April of 1949.

Q. What was the result of that attempt on your part?

A. I was granted a contract for a one-year period on the same basis as the previous contract.

Q. Mr. Brochu, from where are the commodities shipped that you sell in your store?

A. From Cleveland.

Q. Do you receive any other commodities other than those shipped from Cleveland?

A. We do. Some were shipped from Mineola, Long Island, some from St. Louis, Missouri, but the majority are Cleveland manufacture.

Q. Mr. Brochu, I show you an affidavit filed in this case by Mr. Victor Bremer. Would you read the last sentence there on page 11 of this affidavit?

A. "Mr. Brochu asked if I would write him a letter setting forth the contents of our conversation, and I told him I didn't think it was necessary."

[fol. 542] Q. Is that a correct statement?

A. I don't think those were the words used by Mr. Bremer during our conversation on the street. As a matter of fact, he ended the conversation very abruptly at the time that I asked for a written explanation.

Q. You did ask for a written explanation?

A. Yes, as well as having asked Mr. Stillman previous to that.

Mr. Rashid: That is all.

Cross-examination of Joseph Brochu.

By Mr. Fulton:

Q. You have referred to two contracts with the Lorain Journal. I don't have them before me, but I think you

probably know, both contracts contained a cancellation clause. You knew that, did you?

A. I did.

Q. You knew that each contract was cancellable on thirty days notice?

A. Yes.

The Court: What is the purpose of those repeated questions, Mr. Fulton? I'm afraid I don't follow them. There is no suit here on the contract.

Mr. Fulton: I wasn't sure that the contract would be in evidence in this case.

The Court: I know, but there is no claim here. This isn't [fol. 543] a suit on the contract.

Mr. Fulton: I understand it isn't.

The Court: I don't think it makes any difference whether it is cancellable in so far as the question that is involved here is concerned.

Mr. Fulton: It might make some.

The Court: What?

Mr. Fulton: But not too much, I confess.

The Court: What difference would it make? I would like to hear it.

Mr. Fulton: Not too much, except that one has a right, if it is cancellable, to cancel it for whatever reason he desires.

Mr. Kramer: If the court please, could I suggest, if it is possible——

Mr. Fulton: I suppose you would like to add to that "provided he doesn't otherwise infringe upon some other rules of law".

The Witness: That was my interpretation.

Mr. Fulton: As indicating whether he has or has not infringed upon any other rules of law the contract cancellation clause might have some pertinence.

The Court: I don't think it bears on this case at all.

Mr. Kramer: We are not charging the inducing of a breach of contract in this case, your Honor.

[fol. 544] The Court: I didn't think you were. That's why I was asking whether there was any theory or doctrine here under which there was a breach of contract charged, or whether it was understood, and whether there was any dispute about it.

Mr. Fulton: No, I am making no such claim about that, but I think it has some bearing upon the question of whether or not the cancellation does impinge upon some other rule of law. As I understand it, all these contracts contained that clause.

Mr. Kramer: As far as I know, yes.

The Court: They did, and all the letters notifying these people are *la*most identical, written in *in* the identical language.

Q. Where is your place of business?

A. In Lorain, at 629 Broadway.

Q. Under what name do you operate?

A. The Koolvent Metal Awning Company of Lorain.

Q. That is your own business, is it?

A. That's my own business under a franchise agreement with the national organization.

Q. Yes. You are not employed by the national organization, are you?

A. I am employed as a dealer.

Q. And you work on your own?

A. Yes, under the dealer set-up.

[fol. 545] Q. And your territory consists of the counties that you mentioned?

A. Yes, sir.

Q. And the work is all done out of and through this Lorain store?

A. Yes, sir.

Q. Your business?

A. Yes, sir.

Q. Do you install the awnings after they are sold?

A. I do. My mechanics or my installation crew does.

Q. Your mechanics are your employees?

A. Yes.

Q. They are not employees of the national organization?

A. No, sir. They come under their supervision, though.

Q. But you pay them?

A. I pay them.

Q. And you pay them out of the compensation that you get for the sale of the articles made by this national organization?

A. I do, that's right.

Q. Before you went on the radio you took the matter up with your organization at what place?
A. In Cleveland, Ohio.
Q. In Cleveland, Ohio.
A. Also in Pittsburgh.
[fol. 546] Mr. Fulton: That is all.

The Court: How is the advertising paid? Is it paid by you or partially paid by the parent organization?
The Witness: The entire cost of my advertising is paid by myself, your Honor.
The Court: You are not compensated in any way?
The Witness: No, sir.
The Court: I see. All right.
Mr. Fulton: That is all.

Mr. Rashid: That is all.

[fol. 547] Donald A. Heisner, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Donald A. Heisner.

By Mr. Rashid:

Q. Will you state your name, please?
A. Donald A. Heisner.
Q. What is your residence address?
A. R. D. 2, Lorain.
Q. What State?
A. Ohio.
Q. In what business are you engaged, Mr. Heisner?
A. I operate a radio store.
Q. How long have you been engaged in that business?
A. Well, I have had that store opened since June, 1947.
Q. Where is your place of business located?
A. 215 East Erie Street, Lorain, Ohio.
Q. Do you now advertise in the Lorain Journal?
A. No, sir.
Q. Do you advertise over radio station WEOL?
A. Not at present.
Q. Have you ever advertised in the Lorain Journal?

A. Yes, sir.

Q. Calling your attention to the latter part of 1948, I [fol. 548] will ask you whether or not you had an advertising contract with the Lorain Journal at that time?

A. I did.

Q. Did you ever advertise over radio station WEOL?

A. Yes.

Q. When did you first begin to advertise over that radio station?

A. It was just before Christmas in 1948.

Q. Did you enter into a contract with station WEOL for advertising?

A. Yes, sir.

Q. After you began to advertise over radio station WEOL, did the Lorain Journal cancel your advertising contract with it?

A. Yes, sir.

Q. I hand you a document, Mr. Heisner, marked Government's Exhibit 154 for identification, and ask you whether or not that is the letter you received from the Lorain Journal Company?

A. It looks like it.

Q. Did you read it?

A. Yes, sir, I did.

Mr. Rashid: If your Honor please, I offer Government's Exhibit 154 in evidence.

The Court: It may be received.

[fol. 549] Q. Mr. Heisner, following the receipt of this letter from the Lorain Journal Company, did you discontinue your advertising over radio station WEOL?

A. No.

Q. Did you attempt to place any advertisement in the Lorain Journal after you received this letter from Mr. D. P. Self?

A. Yes.

Q. When did you attempt to place such an advertisement?

A. Immediately after I received the letter. According to contract there was a thirty-day notice clause, so I expected to advertise for the following thirty days.

Q. With whom did you attempt to place your advertisement, the particular individual?

A. Mr. Bremer.

Q. What was Mr. Bremer's position at that time, if you know?

A. Well, I understood that he was the advertising manager.

Q. From what do you understand that, how do you know that he was?

A. Well——

Q. Had you had any dealings with him before that time?

A. Yes, I talked to him a number of times.

Q. What were the results of your attempt to place such an advertisement in the Lorain Journal?

A. They refused to take it.

Q. Do you recall what the advertisement was?

[fol. 550] A. Yes, I asked them to run a 2-inch ad calling attention to my radio program.

Q. And they refused to run the advertisement, is that correct?

A. That is right.

Q. Did you have any conversation at that time with Mr. Bremer in regard to your advertisement?

A. Yes, I did.

Q. Where was the conversation held?

A. In the Journal's office.

Q. Was anyone else present other than yourself and Mr. Bremer?

A. No.

Q. Would you please tell the Court what you said to Mr. Bremer and what Mr. Bremer said to you at that time?

A. Well, I can't remember the conversation word for word, but I handed him a copy for the next week's ad and asked him to publish it, and he opened the envelope and read it and he said, "I'm sorry, Don, we can't take it." And I said, "What's the matter with it?" He said, "It's against our policy." That's about the sum and substance of it. We talked the thing over for perhaps a half hour, but we didn't cover any other ground than that.

Q. Do you recall anything that was said by either you or Mr. Bremer during the half hour conversation other than what you have already told the Court?

[fol. 551] A. Well, I was given to understand that—I think the phrase he used was "play ball" if I would play ball with the Journal they would play ball with me.

Q. Did you make any other attempts, Mr. Heisner, to insert an advertisement in the Lorain Journal?

A. Yes, I did.

Q. When did you make that attempt?

A. Well, it would be about a month after that, I called Mr. Bremer again and asked him if—I think the word I used was "boycott"—if the boycott extended to classified advertising and he said there wasn't any boycott, and I said, "All right, will you take the ad?" and he said, "No, we can't do it."

Q. Was anything else said at that time?

A. That's all. That was a telephone conversation.

Q. With whom was that conversation, again?

A. That was with Mr. Bremer.

Q. Have you ever spoken to Mr. Bremer before this time on the telephone?

A. Oh, yes.

Q. Did you recognize his voice?

A. Oh, yes. I have known Mr. Bremer for years. He was my first boss.

Q. Mr. Heisner, does the fact that you do not advertise on radio station WEOL and in the Lorain Journal at the [fol. 552] same time place you at a disadvantage, place you at a competitive advantage or disadvantage?

A. I would say a disadvantage.

Q. Would you explain to the Court the reasons?

A. Well, our biggest business now is television sales, and that is a very rapidly moving field, and in order to reach the public and let them know about new models, new prices, and that sort of thing, it is important that we take advantage of all methods of advertising.

Q. Mr. Heisner, where do the products that you sell in your radio shop come from, where are they shipped to you from?

A. They come from all over the country. The Stromberg-Carlson sets are built in Syracuse, New York, and the Carr ship-to-shore telephones are built in San Pedro, California, the RCA television is built in Camden, New Jersey.

Q. Did you advertise those particular products in the Lorain Journal at the time you had a contract with them?

A. Yes.

Q. Did you advertise any of those products over radio

station WEOL at the time you were advertising over that medium?

A. Yes.

Q. Are those products that you mentioned to the Court shipped from the manufacturing plants of those companies?

A. Sure.

[fol. 553] Q. Are they shipped from the locations you mentioned to the Court just a few minutes ago?

A. You mean directly to me?

Q. Directly to you in Lorain, Ohio?

A. In the case of Carr, on the West Coast, they are shipped directly to me. Stromberg-Carlson ship direct to a Cleveland distributor, the RCA people do the same thing. Bendix people, whom I didn't mention before, ship directly from their factory to me.

Q. And where is their factory located?

A. In Baltimore, Maryland.

Mr. Rashid: That is all.

Cross-examination of Donald A. Heisner.

By Mr. Fulton:

Q. But, of course, whether some of the products come directly from out of the state to you or through some Ohio distributor, we'll say, you sell them from your place of business in Lorain to the person who buys, is that right?

A. That's right.

Q. And the place is where in Lorain?

A. The store is at 215 East Erie Avenue.

Q. And your sales are made from there?

A. Not all of them. We sell ship-to-shore telephones all over the Great Lakes area. Sometimes I go to their offices to get orders.

[fol. 554] Q. And then the goods are delivered from your place of business?

A. That's right.

Mr. Fulton: That is all.

The Court: Are any of the goods at any time shipped directly from the manufacturer to the purchaser?

The Witness: They have been.

The Court: There have been shipments directly from the manufacturer to the purchaser, from out of the state?

The Witness: I have one case in mind last fall where—I guess I had two cases—where ship-to-shore telephones were shipped to yacht owners from the manufacturer or the dealer—in one case the dealer was in Duluth, Minnesota.

The Court: And shipped directly to the consumer?

The Witness: Shipped directly to the consumer, and I put it on for him in Port Clinton, Ohio.

The Court: And you advertised that type of merchandise in the Journal?

The Witness: No, I don't.

[fol. 555] The Court: Did you at that time?

The Witness: No.

The Court: Did you advertise it over the radio station?

The Witness: Yes, sir.

The Court: All right.

Mr. Fulton: That is all.

Mr. Rashid: That is all.

The Court: Do you want your objections noted to these questions as well, Mr. Fulton?

Mr. Fulton: Not to that part of them, anyhow.

The Court: Well, I want your record to be complete. We will adjourn at this time until 2 o'clock this afternoon.

(Adjournment taken to 2 o'clock p. m. on Tuesday, March 7, 1950.)

[fol. 556]

Tuesday, March 7, 1950, at 2:00 o'clock p. m.

CHARLES JOHN THORNQUEST, called as a witness on behalf of plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Charles John Thornquest.

By Mr. Kramer:

Q. What is your name, please?
A. Charles John Thornquest.
Q. Spell your last name.
A. T-h-o-r-n-q-u-e-s-t.
Q. Where do you now reside?
A. Dayton, Ohio.
Q. What is your present occupation?
A. Radio station manager and sales.

Q. What is the name of the radio station?
A. WONE.
Q. I will ask you whether or not you were ever employed by the Elyria-Lorain Broadcasting Company?
A. I was.
Q. Over what period of time?
A. February 1st through or up to October 1, 1948.
Q. In what capacity were you employed?
A. Manager of the station.

[fol. 557] Q. Now, calling your attention to the month of March, 1948, I will ask you whether or not you had any conversation or attempted to have any conversation with the defendant Samuel Horvitz?
A. I did.
Q. Where did this conversation or attempted conversation take place?
A. In his offices here in Cleveland.
Q. And how did you happen to come to his office?
A. I sought an appointment, which was granted me.
Q. And you arrived at his office, did he greet you when you came in?
A. He did.
Q. What did you say to Mr. Horvitz?
A. I told him as manager of a new radio station we would appreciate and enjoy having all the aid and support he could give us so that our facilities could be brought to the attention of the listeners in our area. By aid and support I meant——
Q. You can't tell us what you meant. You can only tell us what you said. What did Mr. Horvitz say in reply, if anything?
A. I don't recall that he replied until I stood up.
Q. You stood up, you say?
A. Yes.

[fol. 558] Q. How long a period elapsed between the time you stopped speaking and the time you stood up, in the matter of seconds or minutes?
A. It is difficult to recall. I would say perhaps 40 or 50 seconds.
Q. You then stood up. What did he say then or what did you say then?
A. I said, "I would like some answer." And his reply was that he would discuss it with his editor.

Q. Did that end the conversation?
A. Yes.
Q. Did you thereafter see the editor of The Lorain Journal Company?
A. I did.
Q. What was his name?
A. Maloy.
Q. Where did you see Mr. Maloy?
A. In his offices at the Lorain Journal.
Q. In Lorain, Ohio?
A. Right.
Q. Did you make an appointment with him?
A. No, I simply went down there.
Q. Walked in and found him there?
A. Yes.
Q. What did you say to Mr. Maloy?
[fol. 559] A. I asked him whether he had had an opportunity to discuss the matter with Mr. Horvitz and what was their position to be.
Q. What did Mr. Maloy say?
A. He said they were still considering the matter, and I got no reaction.
Q. You left?
A. I left.
Q. Did you thereafter have occasion to talk with defendant D. P. Self?
A. I did.
Q. Where was this conversation held?
A. In his office in the Lorain Journal in Lorain.
Q. About what time of the year?
A. Late spring.
Q. Of 19——
A. '48.
Q. How was that conference arranged, did you call him or he call you?
A. I went to Lorain and presented an ad which I wanted to have inserted in the Lorain Journal, an employment ad.
Q. You walked in on the ground floor?
A. I did, the business office, the clerk on duty.
Q. You went to the clerk on duty?
A. Yes.
[fol. 560] Q. And what happened?

A. He looked at it and said, "Wait a moment." He came back and said, "Mr. Self would like to speak to you."

Q. You were then ushered into Mr. Self's office?

A. I was.

Q. Mr. Self opened the conversation, did he?

A. I don't recall who opened it first.

Q. What did you say to Mr. Self or he say to you?

A. I told him I had come over to insert an ad in the paper, and showed him the copy I planned to run. He then replied he was afraid we couldn't run that ad, and then went into some detail to explain to me the attitude of the Lorain Journal toward Elyria businesses, and that of the Elyria Chronicle toward the Lorain businesses.

A. What did he say that attitude or those attitudes were?

A. That it was the practice of the Elyria Chronicle not to run ads for business in Lorain and for the Lorain Journal not to run ads for business located in Elyria.

Q. Well, did you make any reply to that argument or statement?

A. I did. I said I couldn't control his policy in any way, or wouldn't attempt to do so. However, I told him I didn't feel that the policy was pertinent in this case and I named three reasons, and those were: one, the Federal Communications Commission expected us by the license granted us to serve the people of Lorain equally with the people of [fol. 561] Elyria, in fact all of those people within the area of our primary coverage. Number two, that inasmuch as we would without question establish studios and offices in Lorain we would thus become a Lorain enterprise as well as an Elyria enterprise. And number three, we felt that he was doing his readers a disservice by not running this ad since it would thus deny them an opportunity for attractive employment.

Q. To that statement or argument what did Mr. Self say, if anything?

A. He said nevertheless he didn't believe he could run the ad.

Q. And that was all?

A. That was that.

Q. Now, I call your attention to the summer of 1948, and I will ask you whether or not you ever had any conversation with Mr. Self and Mr. Stokley?

A. Yes, I did.

Q. Who was Mr. Stokley, as you understood it?
A. The business manager of the Elyria Chronicle.
Q. Where was this conversation held?
A. In the Elk's Club in Elyria.
Q. And was the conversation happenstance or was it prearranged?
A. Yes, happenstances.
Q. And do you remember what was said?
[fol. 562] A. Not in detail. It was a casual conversation.

Q. Mr. Thornquest, you used in one of your answers to my question the word "primary coverage". Is there such a thing as secondary coverage?
A. Yes.
Q. What do you mean by the term "secondary coverage"?
A. Where the signal of the radio station can be heard but not with clarity and subject to interference with other stations or by atmospheric conditions.
Q. And you prepared Defendants' Exhibit B, did you not?
A. Yes, sir.
Q. And at the time you prepared this it was your understanding and belief that it accurately represented the primary coverage of WEOL; is that correct?
A. That is correct.
Q. How about WEOL-FM, or does it only relate to WEOL?
A. Only to the AM station.

Mr. Kramer: That is all.
Mr. Fulton: No cross-examination.
The Court: Just one second. I didn't get the type of ad that you were seeking to insert.
Mr. Fulton: A want-ad.
The Court: What he was trying to do, he sought to insert an advertisement.

[fol. 563] By Mr. Kramer:

Q. What type of advertisement did you seek to insert in the Lorain Journal?
A. An opportunity for employment.
Q. Was it classified or display?

A. Display, deliberately.
Q. How big an ad?
A. As I recall it was two columns by three inches.
Q. And state the substance of what the advertisement proposed.
A. I can almost quote it verbatim, although I haven't seen it for almost two years. It ran about like this: Your own radio station WEOL will shortly go into operation. A staff is now being formed and local people will be employed insofar as they are qualified. There are openings for stenographers, receptionists, salesmen, bookkeepers. For an appointment call C. J. Thornquest, that is me, of course, and *ma* own phone number.

Mr. Kramer: Thank you very much.

[fol. 564] Leo Falencki, called as a witness on behalf of plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Leo Falencki.

By Mr. Rashid:

Q. Please state your name.
A. Leo Falencki.
Q. Spell that.
A. F-a-l-e-n-c-k-i.
Q. What is your home address?
A. 3302 Elyria Avenue.
Q. Which city?
A. Lorain, Ohio.
Q. In what business are you engaged?
A. I have a hardware and appliance store, meat market and grocery adjoining the hardware and appliance store.
Q. Where is that store located?
A. 3203-3206 Elyria Avenue.
Q. In which city?
A. Lorain, Ohio.
Q. How long have you been engaged in that business?
A. In the meant market and grocery for about thirty years, my Dad started it; and hardware and appliance two years.

Q. Do you advertise at the present time in the Lorain [fol. 565] Journal?

A. Yes, I do.

Q. Calling your attention to the latter part of the year 1948 I will ask you whether or not you had an advertising contract at that time with the Lorain Journal?

A. Yes, I did have an advertising contract with the Lorain Journal.

Q. Did you ever consider advertising over radio station WEOL?

A. Yes, I did consider advertising over radio station WEOL.

Q. When did you first consider advertising over that station?

A. When I heard the news they were going to have a radio station in Lorain.

Q. Do you remember approximately when that was?

A. About two months before the station went on the air.

Q. Did you ever enter into a contract with radio station WEOL for advertising time?

A. Yes, I did enter into a contract with WEOL for advertising time.

Q. When did you enter into that contract?

A. On September 14, 1948.

Q. Prior to the time you began to advertise over radio [fol. 566] station WEOL did you have any conversations with any employees of the Lorain Journal relating to the desirability of advertising over radio station WEOL?

A. Yes, I did.

Q. With whom did you have the conversation?

A. I had conversations with three gentlemen, Mr. Moss, Mr. Bremer and Mr. Self.

Q. How do you spell Mr. Moss' name?

A. I believe it is M-o-s-s. He was in charge of the classified department of the Lorain Journal.

Q. Were those three conversations all held prior to the time you began to advertise over the radio station?

A. Yes, they were.

Q. Well, take the conversations first with Mr. Moss. When did they occur?

A. They occurred on several occasions before I started advertising, when he came down to our place.

Q. Give the approximate time and where the conversation took place.

A. In our store.

Q. Was anyone else present at that time?

A. No, sir, just him and me.

Q. Would you state what you said to Mr. Moss and what he said to you on that occasion?

A. I told Mr. Moss I was interested in advertising over the radio. He told me he thought I was very foolish. [fol. 567] I asked him why and he said, well, the results obtained from radio advertising isn't the same results you get from newspaper advertising. He also tried to discourage me from advertising over the radio, saying that large department stores, especially those in Cleveland, do not advertise over the radio. Well, he brought different other questions up, that people had started advertising on the radio and had cancelled it and went back to newspaper advertising.

Q. Was there anything else said at that time?

A. Well, he came on two or three different occasions. That was one particular instance that he brought that up. And then the second or third time he came down, but every time he came down and he made different remarks saying, "You will be sorry" and later on that the Journal will not take my ads if I did advertise over station WEOL.

Q. Did all three of these conversations take place with Mr. Moss before you began to advertise over the radio?

A. That's right.

Q. What were the names of the other two gentlemen with whom you had conversations?

A. Mr. Bremer.

Q. At the time you had the conversation with Mr. Bremer what was his position with the Lorain Journal?

[fol. 568] A. I think he is in charge of the display advertising of the Lorain Journal.

Q. Was he in charge of the display advertising at the time you had the conversation with him, if you know?

A. Yes, sir.

Q. When did the conversation with Bremer take place?

A. Well, in that same period of the conversations with Mr. Moss, it was in that three-weeks period.

Q. Three-weeks period prior to the time you went on the radio?

A. That's right.

Q. Where did the conversation with Mr. Bremer take place?

A. In his office at the Lorain Journal.

Q. Was anyone else present at that time?

A. I don't quite remember.

Q. Do you recall what you said to Mr. Bremer and what he said to you on that occasion?

A. Well, I told him I didn't think the attitude of the Lorain Journal was right towards us business men in Lorain in not permitting us to advertise in the newspaper and the radio at the same time. He replied to me and said that was the policy, and he couldn't do anything with it.

Q. Was anything else said?

A. He brought out whereby they were protecting the Lorain merchants. He said they didn't permit anybody from Cleveland or Elyria or other cities to advertise in [fol. 569] a Lorain paper, therefore they were protecting the Lorain merchants.

Q. Was anything else said in the conversation?

A. That's all I remember.

Q. Who was the other gentleman with whom you spoke from the Journal?

A. Mr. Self.

Q. Do you know what position he held at the time you spoke to him?

A. I believe he held the business manager position.

Q. Where did the conversation with Mr. Self take place?

A. At Mr. Self's desk.

Q. At the Lorain Journal?

A. At the Lorain Journal.

Q. And approximately when was this conversation?

A. In that period also.

Q. Was anyone present at the time you talked to Mr. Self?

A. No.

Q. Will you tell the Court what was said to Mr. Self and what he said to you in that conversation?

A. He repeated the same thing Mr. Bremer told me. He stated they were protecting the Lorain merchants, that

was their policy. It was practically a repetition of what Mr. Bremer told me.

[fol. 570] Q. Did you have any other conversation with any other employees of the Lorain Journal prior to the time you began the use of WEOL?

A. I don't believe so.

Q. After you began to advertise on WEOL, I will ask you whether or not the Lorain Journal refused to accept any more of your advertisements?

A. Well, they accepted four mats I had given them to advertise, each one to advertise for each week for four weeks. He advertised the first and second mats but the other two were not advertised.

Q. You mean they weren't run?

A. They weren't run.

Q. Following the time you began to advertise on the radio station WEOL did you have any conversations with any employees of the Lorain Journal relating to the advertising over the radio station?

A. Yes, I had a talk with Mr. Maus.

Q. Where was this conversation held?

A. It took place at our store.

Q. Approximately how long after you began the advertisement over the radio?

A. Oh, not more than two weeks after I advertised over the radio.

Q. Did you know at the time of the conversation what [fol. 571] position Mr. Maus held with the Journal?

A. He was in charge of the classified section of the Lorain Journal.

Q. Was he the gentleman who customarily took your ads?

A. For the classified department he had.

Q. Will you tell us what you said to Mr. Maus and what he said to you on this particular occasion?

A. Mr. Maus came out to see me and asked me how I am getting along with the radio station. I said, "Well, pretty good. I am receiving a lot of new customers and see new faces." He said, "You think you are still going to advertise with them?" I said, "Yes, I think I will." We had more conversation not pertaining to the radio station or the Lorain Journal and I don't recall what it was.

Q. Was that all that transpired at that time?

A. Yes. A little later on there was another time he came in the store, about another week later.

Q. Mr. Maus?

A. Mr. Maus. He brought a clipping from the Elyria Chronicle, regarding some religious trouble that had arisen between the radio station and Elyria Chronicle. I don't quite remember what it was. I was quite busy at the time and didn't talk with him very much. He brought the clipping, I think it was a full page ad from the Elyria Chronicle [fol. 572] and showed it to me.

Q. Do you recall what was said when he showed you the clipping?

A. I don't quite recall. I was quite busy at that time and he didn't tell me everything.

Q. Do you remember what the clipping was?

A. It was in regard to some program WEOL put on the air for a religious organization or church and later refused it, or something of that character. It was published in the Elyria Chronicle. He brought the paper over and showed it to me.

Q. Did you have any conversation with any other employees of the Lorain Journal after you began to use the radio station WEOL?

A. I don't remember. I don't think so.

Q. Following these conversations with employees of the Lorain Journal, I will ask you whether or not you cancelled your advertising contracts on the air with radio station WEOL?

A. Yes, I did.

Q. After you cancelled your advertising contract with the radio station did you at any time attempt to secure another advertising contract with the Lorain Journal?

A. Yes, I did.

Q. What were the results of that attempt on your part? [fol. 573] A. I called up and said I was interested in renewing my contract and I said I had a contract with station WEOL and they said that, "Well, as soon as you give me a written—an oral—say that you are going to cancel your contract, we will take your advertising, and it doesn't necessarily mean that you have to have it written." He said, "You just tell us you are going to cancel it and we will start taking in your advertising."

Q. With whom did you speak on that occasion?

A. Mr. Maus.

Q. Where was that conversation held?

A. It took place over the telephone.

Q. Have you ever talked to Mr. Maus on the telephone prior to that time?

A. About the radio?

Q. About any matter?

A. Prior to that time, well, yes, for our ads previous to the radio station I had occasions when I would give him what I wanted to publish, what I wanted to advertise in the paper over the telephone.

Q. Did you recognize his voice?

A. Yes, I can recognize it.

Q. The parties in this case have stipulated that the General Electric Company, the H. J. Heinz Company and Lever Bros. Company have contracts to advertise in the [fol. 574] Lorain Journal. Do you sell products made by those companies?

A. Yes, we do.

Q. Is any part of the cost of your ads of those products borne by the national advertisers?

A. Yes, they are.

Q. What percentage of your ads is borne by the national advertisers in those cases?

A. Will you read that question?

Q. What percentage of the cost of the advertising of these products is borne by the national manufacturer?

A. Well, they vary. Some 50 per cent of your cost is paid, and some 75 per cent, and others on the basis of what you purchase.

Q. On these particular ones, General Electric, for example, what percentage of the cost do they pay?

A. 50 per cent.

Q. And the H. J. Heinz Company?

A. About 10 cents a case for every case you buy.

Q. And Lever Bros.?

A. About 10 cents a case.

Q. Where do the products sold by the General Electric Company, H. J. Heinz Company and the Lever Bros., where are those products shipped to you from to Lorain, Ohio? I mean they are shipped to Lorain, and where are they [fol. 575] shipped from when they were sent to you in Lorain?

A. Some of them are shipped direct from the manufacturing plant, others are shipped through distributors in Cleveland, Ohio.

Q. Does General Electric ship direct from the manufacturing plant or through a distributor?

A. Through a distributor in Cleveland.

Q. What about H. J. Heinz Company?

A. They ship to their branch office here in Cleveland and then it is brought to us.

A. And what about Lever Bros.?

A. They ship direct.

Q. Where is Lever Bros. manufacturing plant located, if you know?

A. I believe it is Cambridge, Massachusetts. I am not sure of that.

Mr. Rashid: That is all.

Cross-examination of Leo Falencki.

By Mr. Fulton:

Q. In these several conversations with the several men, I think you have mentioned Mr. Bremer, Mr. Maus, Mr. Self—None of those men said to you you couldn't use the facilities of the radio station, did they?

A. No, I don't believe they did.

Q. As a matter of fact, Mr. Maus suggested that you try [fol. 576] it out even to the point of giving away some prizes, didn't he?

A. That's right.

Q. And, moreover, later on when you came back to advertise in the Journal you told Mr. Maus, didn't you, that you hadn't received any benefit at all from this radio advertising?

A. At the beginning I told him I had good results and then it kind of died down.

Q. And at the time you talked to him you told him it died out?

A. That's right.

Q. These products that you have been asked about, such as Heinz, and products by General Electric Company and by Lever Bros., without reference to whether they came directly from the maker to your store or from the maker

to a distributor in Ohio and then to your store, it is a fact, isn't it, that those articles which you sell that come to you from those three concerns, those articles come into your store and remain there and are sold from there by you to your customer, isn't that right?

A. Yes, sir.

Mr. Fulton: That is all.

[fol. 577] Redirect examination of Leo Falencki.

By Mr. Rashid:

Q. Mr. Falencki, you stated on cross-examination that none of the individuals from the Lorain Journal with whom you conferred told you that you could not advertise on the radio station, is that correct?

A. I couldn't advertise in both. I couldn't advertise in the Lorain Journal, I couldn't advertise on the station at the same time.

Mr. Rashid: That is all.

Mr. Fulton: That is all.

[fol. 578] Henry Kohlmyer, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Henry Kohlmyer.

By Mr. Rashid:

Q. Will you state your name, please?
A. Henry Kohlmyer.
Q. What is your home address, Mr. Kohlmyer?
A. 1235 East Erie, Lorain.
Q. In what business are you engaged?
A. Hardware store.
Q. How long have you been engaged in the business of a hardware store?
A. About fifteen years.
Q. Where is your place of business located?
A. 3009 Pearl Avenue.
Q. In which city?
A. Lorain.

Q. What?
A. In Lorain.

Mr. Kramer: I can't hear you. Would you mind speaking louder?
The Witness: Yes. Lorain, Ohio.

Q. Do you now advertise in the Lorain Journal?
[fol. 579] A. Yes, I do.
Q. Calling your attention to the latter part of 1948, I will ask you whether or not you had an advertising contract with the Lorain Journal at that time?
A. Yes, sir, I did.
Q. Did you ever consider advertising over radio station WEOL?
A. Yes, I did.
Q. When did you first consider advertising over radio station WEOL?
A. The latter part of October.
Q. Of which year?
A. 1948.
Q. Did you ever enter into a contract with radio station WEOL for advertising, then?
A. Yes, I did.
Q. After you contracted to advertise with radio station WEOL, did you have any conversation with employees of the Lorain Journal relating to the desirability of advertising over station WEOL?
A. Yes, I did.
Q. With whom did you have those conversations?
A. Jim Grills.
Q. Do you know what Mr. Grills' position was at the time you had the conversation with him?
[fol. 580] Mr. Fulton: I object to that, if your Honor please, what his position was—oh, I beg your pardon. His position. I thought he meant his attitude. I am sorry.
A. Yes, he was our advertising man.
Q. When was the conversation with Mr. Grills had?
A. It must have been in the early part of November.
Q. Of which year?
A. 1948.
Q. Where did the conversation take place?
A. At my hardware store.
Q. Was anyone else present at the time?

A. No one that heard the conversation.

Q. Would you please tell the Court what you said to Mr. Grills and what he said to you during this conversation?

A. Well, he just mentioned that if I didn't stop broadcasting over WEOL my contract would be cancelled with the Journal.

Q. Was anything else said at that time?

A. No, sir.

Q. Did you say anything to him in reply?

A. No, I didn't.

Q. After you began to advertise over radio station WEOL, I will ask you whether or not the Lorain Journal [fol. 581] cancelled your advertising contract with it?

A. Yes, they did.

Q. I hand you a document marked Government's Exhibit 155 for identification, and ask you whether that is a carbon copy of the letter you received from the Lorain Journal?

A. Yes, that is a copy.

Mr. Rashid: If your Honor please, I offer Government's Exhibit 155 in evidence.

The Court: It may be received.

Q. Following receipt of this letter of cancellation from the Lorain Journal, did you have any conversation with any employees of the Lorain Journal relation to your advertising over radio station WEOL?

A. Yes, with Mr. Grills.

Q. Where did this conversation take place?

A. In my hardware store.

Q. And approximately when did it take place?

A. In the latter part of November somewhere.

Q. Of what year?

A. 1948, or the first part of December.

Q. Was anyone else present at the time?

A. No.

Q. Would you please state what you told Mr. Grills and what he told you at that time?

A. Well, he said if I quit advertising over the air that my [fol. 582] contract would be reinstated with the Journal.

Q. Did you say anything to him at that time?

A. No, other than that I would stop advertising over WEOL and start advertising in the Journal.

Q. Following this conversation with Mr. Grills I will ask you whether or not you cancelled your advertising contract with station WEOL?

A. Yes, I did.

Q. After you cancelled your contract with station WEOL, did you ever attempt to secure a new contract with The Lorain Journal?

A. Yes, I did.

Q. What were the results of any such attempt on your part?

A. I was given a new contract with the Journal.

Q. Does the fact that you are not able to advertise in both the Lorain Journal and over radio station WEOL place you at a competitive disadvantage or a competitive advantage?

A. Say that again.

Q. Does the fact that you do not advertise both in the Lorain Journal and over radio station WEOL place you at a competitive disadvantage or advantage?

A. Disadvantage.

Q. Would you please explain that to the court?

A. Well, we have three hardware stores, one in Norwalk, Ohio, two in Lorain, and I can use the radio station to reach more people by advertising over the air, that is, [fol. 583] to cover the three stores, than I can just in the Lorain Journal alone.

Q. Mr. Kohlmyer, the parties in this case have stipulated that the General Electric Company has a contract to advertise in the Lorain Journal. Do you handle products sold by the General Electric Company?

A. Yes, I do.

Q. Is any part of the cost of this advertising of General Electric products borne by the manufacturer?

A. Yes.

Q. What percentage of that cost is borne by the manufacturer?

A. About fifty percent.

Q. From which place or places are the products of the General Electric Company shipped to you in Lorain, Ohio?

A. From Cleveland.

Mr. Rashid: That is all.

Cross-examination of Henry Kohlmyer.

By Mr. Fulton:

Q. Did you say you had three stores?
A. Yes, sir.
Q. And the stores are where?
A. One in Norwalk and two in Lorain.
Q. Do you use the radio for your Norwalk store?
A. I do not.
Q. In the first conversation you had with Mr. Grills on [fol. 584] this subject of the dual advertising, he told you, of course, that you were privileged to use the radio medium of advertising if you wanted to, didn't he?
A. Yes.

Mr. Fulton: That is all.
Mr. Rashid: That is all.

[fol. 585] Nat Rosenbaum, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Nat Rosenbaum.

By Mr. Seidler:

Q. Please state your name.
A. Nat Rosenbaum.
Q. Your address, sir?
A. Residence?
Q. Residence.
A. 2882 East Eric Avenue.
Q. What is your business?
A. Clothier and haberdasher.
Q. How long have you been in that business?
A. 27 years.
Q. Where is your place of business located?
A. 601 Broadway.
Q. In the town of?
A. Lorain, Ohio.
Q. Do you advertise in the Lorain Journal?
A. I do.

Q. And have you ever advertised over station WEOL?
A. Yes.
Q. When?
A. October 1948, I guess, as close as I can remember.
Q. As near as you can recollect?
[fol. 586] A. Yes, sir.
Q. Did you at the time you were advertising over station WEOL have an advertising contract with the Lorain Journal?
A. Yes.
Q. Following the occasion on which your radio program was heard, did you have any conversations with an individual known to you to be a representative of the Lorain Journal?
A. Yes.
Q. When?
A. Around November some time; right after—I couldn't remember the date, but around in about November 1, or so.
Q. Of what year?
A. 1948.
Q. Then you would say shortly after your program was first heard?
A. Yes.
Q. With whom did you have that conversation?
A. Mr. Self came into the store.
Q. Was anyone else present?
A. Yes, there was my clerk there, Russ Owens.
Q. Will you please state or relate to the court, to the best of your recollection, the conversation which took place between yourself and Mr. Self?
A. Mr. Self said it's too bad that a store like mine should jeopardize the advertisements of the Journal and go on the Journal——
[fol. 587] The Court: And what?
The Witness: To go on the radio station, I mean.
Q. What did you say to him?
A. I said I liked to try it and see whether it would give me results, I would like to be on both. I don't want to give up the Journal because that was my best bet, and right before Christmas I would like to stay on both.
Q. You told Mr. Self you would like to remain on both the Journal and Station WEOL?
A. Yes.

Q. What did he respond to that?
A. He said I could be on either one or the other.
Q. You could be on either one or the other?
A. Yes.
Q. Did you have any further conversation with any representative of the Journal?
A. No.
Q. Did you discontinue your radio advertising following this conversation?
A. No, I kept on going until after Christmas because I couldn't advertise in the Journal, so I had to go.
Q. Following the date on which your contract with the radio station WEOL expired, did you attempt——
A. It didn't expire. They changed my time also, that's why I got off and went back to the Journal.
[fol. 588] Q. You discontinued your radio advertising?
A. Yes.
Q. You say you went back to the Journal. Will you please tell the court what you did to go back on the Journal?
A. Well, the truth is that I had a contract with the radio and they changed my hour. I was on at six o'clock between the news and the sports and all of a sudden they stole my space.
Q. You discontinued your radio contract then?
A. Yes.
Q. Did you then make an effort to place a contract with the Lorain Journal?
A. Then I went back and called Mr. Self, I wanted to go back on the Journal, and that I quit the radio.
Q. You spoke with Mr. Self?
A. Yes.
Q. When, sir?
A. Well, as soon as I got off the radio.
Q. Where did you speak with him?
A. In the store.
Q. In the store?
A. Yes.
Q. And what did you tell him?
A. That I am going to get off the radio and going on back to the Journal.
Q. And did he make any response to that?
[fol. 589] A. Yes, I had a new contract.
Q. He sent you a new contract?

A. Yes.

Q. Did you express to Mr. Self at the time that you did wish to advertise over both WEOL and the Lorain Journal?

A. Yes, we would like to even now, I would like to if I could.

Q. You say that you were in the business of a men's haberdashery?

A. Yes.

Q. What type of product do you sell, sir?

A. We sell Society Brand suits, Stetson hats, Dobbs hats, all the advertised lines.

Q. Does any of those products come to you from outside the State of Ohio?

A. Oh, yes, we get them from all over. California, too.

Q. Can you give a few examples, sir?

A. Stetson comes from Philadelphia.

Q. Stetson hats are shipped to you from Philadelphia?

A. From Philadelphia. Dobbs hats come from Norwalk, Connecticut. Sportswear comes from Los Angeles. Hosiery comes from Pennsylvania.

Q. Any particular type of hosiery?

A. Westminster hosiery.

Q. Did you advertise these products over the radio station?

A. Yes.

[fol. 590] Q. And do you advertise these products in the Lorain Journal?

A. Yes.

Q. Do any of your customers ever ask you to order a product for them and have it shipped directly to them; that is, directly to the customer?

A. Yes.

Q. Can you state the product?

A. Well, sports shirts.

Q. What type of sport shirts?

A. McGregor.

Q. McGregor sport shirts?

A. Yes.

Q. Is that sport shirt shipped directly from the manufacturer to the customer?

A. No.

Q. It is shipped to your store?

A. Yes.

Q. But you do order it on the basis of a preexisting order from the customer? By that I mean does the customer come in and say to you, "I would like a McGregor sport shirt, such and such a color"?

A. No; they sometimes go by the window there and they see an article in the window and I get a letter and they specify what article it is, and I mail it to them C. O. D.

Q. You didn't get my question, sir. Do you ever sell a [fol. 591] particular type of product from outside the State of Ohio, in which a customer comes in and asks you for it, you do not have it in stock, and so you have to write directly to the manufacturer for the product?

A. Yes.

Q. Can you think of any product with which that has happened?

A. It happened with Dobbs hats, it happened with Stetson hats, too.

Q. Is has happened with Stetson hats?

A. Yes.

Mr. Seidler: That is all.

Cross-examination of Nat Rosenbaum.

By Mr. Fulton:

Q. In other words, a purchaser comes in to get his type of hat and you don't have one in stock at the time?

A. Yes, sir.

Q. And if that happens, you say to him you will get one in for him, or get other stock in?

A. No, I would get one for him.

Q. I mean that is how it does occur, I take it?

A. Yes.

Q. In other words, I come in and say that I would like to have a Stetson hat. If you have it there you sell it to me from your stock, don't you?

A. That's right.

[fol. 592] Q. If it isn't there you will say to me, the customer, well, I'll get——

A. I will order you one.

Q. You will order me one?

A. Yes.

Q. Do you handle Stetson hats?

A. Yes.

Q. Just as an example, about how many Stetson hats do you try to keep in stock at one time on the average?

A. We have about fifty dozen.

Q. So that if I did come in and you were out of Stetson hats completely——

A. It just happened to me a man came in for a high silk hat which I don't carry in stock. I had to order it.

Q. That was a special hat?

A. Yes.

Q. But if I did come in to buy a Stetson hat and you didn't have it in stock, you wouldn't order just one hat for me, would you?

A. I certainly would.

Q. One Stetson hat?

A. Yes.

Q. Or would you buy in a stock of Stetson hats?

A. No, we could order one hat. We pay fifty cents more for that hat because it is a special order for a customer.

Q. For just one?

[fol. 593] A. Yes, but we have the retail price.

Q. Now, when you do that, of course, you do it as a matter of convenience to your customer, don't you?

A. Naturally, I have to.

Q. Your sales are pretty generally made from the stock of merchandise you have on the shelves?

A. I hope so, yes.

Q. Now, who was it from the radio station that gave you notice that other space was assigned to you for your advertising?

A. That's one I didn't like, because I was going to remain on the radio. I had some results from it, but all of a sudden they sold my space without asking me.

Q. Who was that that notified you about it?

A. A fellow by the name of—I think it was a Mr. Schmitt, and he didn't like it either, so it was one of the upper crust that gave him the order, I guess.

Q. You don't know who that was?

A. No.

Q. Who got your space, do you know?

A. The Men's Shop of Elyria.

Q. The Men's Shop of Elyria?

A. Yes.

Q. Do you have a store in Elyria, too?
A. No, I don't.
Q. Now, as a matter of fact, when you first talked to Mr. [fol. 594] Self about this matter of, as you put it, and quite properly, your stating that you wanted to advertise over both the radio and in the newspaper, he discussed with you what you said was the policy of the Lorain Journal, and he said to you to go ahead and try out the radio advertising, didn't he?
A. Yes, he did say that, yes.
Mr. Fulton: That is all.

Mr. Seidler: You may step down, Mr. Rosenbaum.

[fol. 595] ANTHONY T. RETAY, JR., called as a witness on behalf of the plaintiff, and being first duly sworn, was examined and testified as follows:

Direct examination of Mr. Anthony T. Retay, Jr.

By Mr. Seidler:

Q. Will you please state your name?
A. Anthony T. Retay, Jr.
Q. What is your address, sir?
A. 1717 East 28th Street.
Q. In what town?
A. Lorain, Ohio.
Q. What is your business or occupation?
A. Welding business.
Q. Please speak up so that everyone can hear you.
A. Welding shop.
Q. Where is your place of business located?
A. At 1717 East 28th Street.
Q. Where?
A. 1717 East 28th Street, Lorain, Ohio.
Q. Do you advertise in the Lorain Journal?
A. I do.
Q. Do you advertise over station WEOL?
A. No.
Q. Have you ever advertised over station WEOL?
A. Yes, sir, I did.

Q. When?

[fol. 596] A. January 31, 1949 until approximately June, 1949.

Q. Following the occasion on which your radio program was first heard, did you have any conversations with a representative of the Lorain Journal?

A. No, I didn't.

Q. Following the occasion on which your radio program was first heard, what happened to your advertisements in the Lorain Journal?

A. They were cancelled out, just quit advertising, that's all, without me knowing it.

Q. Can you explain how you found out that you had been cancelled out, as you put it?

A. Well, it wasn't in the paper any more.

Q. You weren't in the paper?

A. No, I wasn't.

Q. As I understand it, you checked the paper one day and found your advertisement had been dropped?

A. That's right.

Q. Customarily, then, you did not have to renew your advertisement daily? It was automatically reprinted each day?

A. According to my contract.

Q. Following the occasion on which you discovered that your advertisement in the Lorain Journal was no longer being carried, did you have any conversation with a rep-

[fol. 597] resentative of the Lorain Journal?

A. Yes, sir, I did.

Q. With whom, sir?

A. With Mr. Wilson.

Q. Where did that conversation take place?

A. My place of business.

Q. Was anyone else present?

A. I don't know.

Q. You can't recall?

A. No, I can't.

Q. Do you know what Mr. Wilson's capacity was with the Journal at that time?

A. I believe he solicited business for the Journal, classified ads.

Q. Speak up louder.

A. I believe he solicited classified ads for the Journal.

Q. Will you relate to the court, to the best of your recollection, the substance of that conversation?

A. Mr. Wilson asked me how much it was costing me to advertise on the radio and I told him, and he said, "Don't you think if you spent as much money with the Journal as you do with the radio that you would be further ahead?" Well, of course, I couldn't answer that whether I would or not. I just tried the radio once. But that's about the extent of the conversation.

[fol. 598] Q. Did you tell Mr. Wilson that you wished to advertise over station WEOL as well as in the Lorain Journal?

A. Yes, I did. I told him I would continue to spend as much with the Journal as I have been, and I was going to advertise on the radio, too, but, well—he didn't say it was impossible or anything, but it was just out of the question, that's all, I just couldn't do it.

Q. That you could not advertise?

A. I could not do it. He didn't tell me, but I could take his actions.

Q. He said you cannot do it?

A. No, no, he didn't say it, but from his actions I knew we couldn't do it.

Q. Following your conversation with Mr. Wilson did you discontinue advertising over station WEOL?

A. Not right after that. It was about in June or July we *we* discontinued the radio broadcasts, and then I called Mr. Wilson.

Q. Why did you discontinue your radio broadcasts?

A. We were losing business in Lorain proper.

Q. Therefore you desired to go back to the Lorain Journal?

A. Yes, sir.

Q. And what efforts did you make to renew your contract with the Lorain Journal?

A. Well, I asked them to take me back, and he brought a [fol. 599] contract out which I signed.

Q. Mr. Retay, you stated you were in the welding business?

A. Yes, sir.

Q. Can you explain a little more fully what your business entails?

A. Well, we take in ornamental iron work, railings, in-

side, outside, yard lamps, and anything pertaining to ornamental iron works.

Q. You say you take it in. You take it in for repairs?

A. No, no, we fabricate, manufacture.

Q. Where do you obtain the materials from which you fabricate your finished product?

A. The steel warehouses in Cleveland.

Mr. Seidler: No further questions.

Mr. Fulton: No examination.

[fol. 600] Joseph G. Kowalski, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Joseph G. Kowalski.

By Mr. Seidler:

Q. Will you please state your name?
A. Joseph G. Kowalski.
Q. Your address?
A. 1482 E Street, Lorain, Ohio.
Q. What is your business, sir?
A. Assistant Manager of the Central Bakery, Lorain, Ohio.
Q. How long have you been in that business?
A. All my life.
Q. I take it, then, that is a family establishment?
A. That is a family establishment.
Q. Where is your place of business located?
A. 2326 Elyria Avenue, Lorain, Ohio.
Q. Do you advertise in the Lorain Journal?
A. Yes, sir, we do.
Q. Have you ever advertised over station WEOL?
A. Yes, we have.
Q. Can you tell us when?
A. We drew up a contract with WEOL in October, 1948, and we continued advertising until May, 1949.
Q. Following the occasion on which your program was first heard over station WEOL, did you make any attempt to place an advertisement in the Lorain Journal?
[fol. 601] A. Yes, we have.

Q. When?

A. In the month of April, 1949.

Q. Will you please describe to the court what steps you took to place your advertisement in the Lorain Journal?

A. The first thing I did was I called the Lorain Journal to make an appointment, to have a man come down to see us about running a full page ad, and the phone was answered by a girl, and the first question she asked me was if we were affiliated with WEOL. I said yes. Then she said she would send a man down to see me.

Q. Did a representative of the Journal come to see you?

A. Yes, a Mr. Grills.

Q. Did you know Mr. Grills?

A. I never saw him before.

Q. Did he state to you what his capacity with the Journal was?

A. Why, I understood he is a salesman.

Q. Did he state to you what his capacity was?

A. Yes, he looks up business for ads on the Journal.

Q. Where did this conversation take place?

A. In the office of the bakery.

Q. Was anyone else present?

A. The office force, consisting of three girls.

Q. Do you know the names of the girls?

A. Yes, I do.

[fol. 602] Q. Will you state them, please?

A. The head bookkeeper, Dorothy Kalina, the second bookkeeper, Bernice Ulinski, and my sister-in-law, Mary Kowalski.

Q. Will you tell the court, to the best of your recollection, the substance of that conversation with Mr. Grills?

A. Well, I told Mr. Grills that we just completed a remodeling job on our front end of the bakery and that we would be interested in running a full page ad to coincide with our 34th anniversary of the bakery, and he asked if I was affiliated with WEOL and I said that I was, and he said he didn't think it was possible that I could run an ad until my contract was broken with WEOL. Before he left, the same afternoon, he made it definitely clear that without a break of the contract with WEOL he could not accept my ad.

Q. Did you thereafter discontinue your contract with WEOL?

A. Yes, definitely so.

Q. Did you there after attempt to place your advertisement with the Lorain Journal?

A. Yes, we have had several ads with the Lorain Journal since then.

Mr. Seidler: No further questions.

Mr. Fulton: No examination.

[fol. 603] Barney Nelson, called as a witness on behalf of the plaintiff, and being first duly sworn, was examined and testified as follows:

Direct examination of Barney Nelson.

By Mr. Seidler:

Q. Please state your name.

A. Barney Nelson.

Q. Your address?

A. 2510 South Jefferson Boulevard, Lorain, Ohio.

Q. What is your business?

A. General contractor.

Q. How long have you been in that business?

A. We have been in that business approximately fifteen years, three years of it in Lorain.

Q. What is your address, that is, of your place of business?

A. 2216 Broadway.

Q. In——

A. Lorain, Ohio.

Q. Do you advertise in the Lorain Journal?

A. We do.

Q. Do you advertise over station WEOL?

A. Not now, we don't.

Q. Did you have an advertising contract with the Lorain [fol. 604] Journal in the latter part of 1948?

A. Yes, sir, we did.

Q. And did you ever enter into a contract with station WEOL?

A. Yes.

Q. When?

A. The exact date the contract was signed was October 29, 1948. The advertising was to start November 2, 1948.

Q. Did your program actually begin over the air?

A. Yes.

Q. Following your first broadcast over station WEOL, did you have any conversations with any individuals known by you to be representatives of the Lorain Journal?

A. Yes, I did.

Q. Did you have more than one conversation?

A. Yes, with two different—or even three people from the Lorain Journal.

Q. As to the first conversation which you had with a representative of the Lorain Journal, where did that take place?

A. In my office.

Q. And with whom?

A. A Mr. Gerhardt—excuse me. The first conversation was with Mr. Grills of the Lorain Journal; I believe he was the first one—well, either one or the other. They were very close together.

Q. Well, taking the conversation with Mr. Grills first, [fol. 605] do you know what Mr. Grills' capacity was?

A. Well, he was the man that planned and wrote the ads for me for the display advertising in the newspaper.

Q. You had known Mr. Grills prior to this conversation you had?

A. Oh, yes, we had quite a bit of business with him.

Q. Was anyone else present at that time?

A. Yes. I am in business with my father and he happened to be present at the same time.

Q. Will you relate, to the best of your recollection, the substance of that conversation?

A. We had had an ad in the paper on the same night that our first radio program went into effect. Naturally, the next day Mr. Grills walked into my office and said he had heard, or that the paper had heard I was broadcasting on WEOL, and that due to that fact he wouldn't be able to take care of my advertising after that particular date due to the fact that I did have this program on the air.

Q. What type of advertising was he referring to?

A. Well, that was the display type of advertising in the main section of the paper, known as display advertising.

Q. You mentioned another conversation with Mr. Gerhardt?

A. Yes.

Q. Was he a representative of the Lorain Journal?

[fol. 606] A. Yes, he took our classified advertising. As I understand, they had two separate departments, one man handling display and one man the classified.

Q. Did you have a contract for display advertising?

A. No, at that time we had no contract; we had just had the classified contract.

Q. You did have a classified contract?

A. That's correct.

Q. Where did your conversation with Mr. Gerhardt take place?

A. Also in my office.

Q. And was anyone else present there?

A. The same gentleman, my father, who is always in the office.

[fol. 607] Q. Can you please relate the nature of that conversation, the substance of it?

A. Well, as I recall it had to do with the fact that inasmuch as we had a classified contract we could continue to advertise in the classified section but only the minimum contract which was, oh, I believe, just a few inches or a few lines. Minimum contracts are only taken in order to get a lower rate of advertising, so we never used as low as the minimum contract, and he informed me we could advertise just the minimum contract in the paper.

Q. Had you customarily placed advertisements above your minimum?

A. Most generally, yes.

Q. Did you have any further conversations with representatives of the Lorain Journal?

A. Yes, after——

Q. Yes, or no, sir.

A. Yes, sir.

Q. With whom?

A. With a Mr. Self of the Lorain Journal.

Q. Where did this conversation take place?

A. At the Lorain Journal.

Q. Where at the Lorain Journal?

A. Well, at his desk or his office, as it might be.

Q. Was anyone else present?

A. Well, there were men working around there, I mean

[fol. 608] the office isn't closed off, it's right out in the central room where other people are working.

Q. And this conversation took place following the conversations with Mr. Grills and Mr. Gerhardt?

A. That is correct.

Q. Will you please state or relate, to the best of your ability, the substance of that conversation with Mr. Self?

A. Yes, sir, I will. I went to see Mr. Self because in our business advertising is very important, and we try to keep our name in front of the public as much as possible, and when I was told I could no longer advertise in the display part of the paper, and also that I would be kept to a minimum in the classified, I went to Mr. Self to find out the whys and wherefores of it, and was informed that that was the policy of the organization, and also that he was trying to protect me, and I asked him what he meant by that, and he said that they were keeping out-of-towners from advertising in their paper and that on the radio people from adjoining counties or cities or villages were advertising, and that business was bound to go to those other people, and the policy of the paper was not to let any of these outsiders advertise in the paper, that he was protecting me to some extent. I couldn't quite get what he was driving at, except that it was made very firm and definite that if I advertised on the radio I could not advertise in the newspaper.

[fol. 609] Q. He told you that specifically?

A. That was the policy of the paper.

Q. That was, of course, with relation to display advertising?

A. That's what we are talking about, yes.

Q. Did you state to any of the three representatives of the Lorain Journal with whom you spoke that you would desire to place advertisements over WEOL as well as the Lorain Journal?

A. Very definitely, we wanted to advertise in both mediums of advertising.

Q. And you so expressed yourself?

A. Absolutely.

Q. What was the response when you made that statement, sir from Mr. Self?

A. Well, just that it was the company policy, that if I were on the air I could not advertise in the newspaper.

Q. That was the statement of Mr. Self?

A. That is correct.

Q. Mr. Nelson, you stated you were in the general contracting business.

A. Yes, sir.

Q. Can you tell us a little more fully what that pertains to?

A. That pertains to both new building and remodeling of old buildings, residential and commercial.

Q. And where do you obtain the products which go into the remodeling and building of the structures?

[fol. 610] A. Well, they are obtained from various sources, jobbers, dealers, lumber yards.

Q. Are any of the materials obtained from outside the State of Ohio?

A. Some of them are, yes.

Q. Can you name a few?

A. Well, for one, Garity bathroom fixtures, which are manufactured in Adrian, Michigan. Roofing, if bought in carload quantities, would go direct from the manufacturer to a jobber, but we don't buy that too frequently in such quantity.

Q. Are any of these products which originate at points outside of the State of Ohio, shipped directly to the building site?

A. No.

Q. They go directly to you?

A. They come to my office or warehouse and then are relayed to the building site.

Q. Do you order any of these products from outside the State of Ohio based upon pre-existing orders which you have from a customers?

A. Oh, yes, we will not order merchandise unless we have a definite place for it.

Mr. Seidler: Thank you, sir.

Mr. Fulton: No cross-examination.

[fol. 611] CLYDE C. MESSMORE, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Clyde C. Messmore.

By Mr. Altman:

Q. State your name, please.
A. Clyde C. Messmore.
Q. What is your address, Mr. Messmore?
A. Business or home?
Q. Home address.
A. 1324 West Erie Avenue, Lorain, Ohio.
Q. What is your business, Mr. Messmore?
A. Photography.
Q. What is the name of your place of business?
A. Well, I have got one business under the name of National Photography Service, I have another business under the name of Babyland Studio, neither one connected with the other.
Q. How long have you been in the business of running the Babyland Photograph Studio?
A. Since July 5, 1949.
Q. And where is your Babyland Studio located, in what building, Mr. Messmore?
A. 212 Broadway Building, Lorain, Ohio.
Q. When you decided to open your studio, did you make arrangements to advertise the Babyland Studios over radio [fol. 612] station WEOL?
A. I did, yes, sir.
Q. Do you recall when it was your advertising over WEOL was to begin?
A. Well, it started, I would say, a week or so after we—we were on a trip West or South, and we came back and opened up on the 5th. It was a week or ten days after that the radio started in. I can't say without looking at the records, exactly what date. I signed a six-month contract, I know that.
Q. Could you state that you began to advertise in July of 1949?
A. Yes, I am pretty sure it was July.
Q. Do you recall when you signed the contract with radio station WEOL?

A. No, I couldn't. I would have to look at my contract for that.

Q. Could you state whether you signed it perhaps in June or July? Did you sign it before you left for your trip?

A. Well, that was signed after we came back from the trip. They were decorating the rooms while we were on the trip.

Q. When were the arrangements made by you to go on radio station WEOL?

A. That's what I say I couldn't say definitely, whether it was July or the first part of June. I would have to look at the contract. I know I signed a six-months contract.

[fol. 613] Q. Did you seek to advertise the opening of the Babyland Studio in The Lorain Journal?

A. Yes, sir.

Q. What efforts did you make?

A. Well, I asked to have a man come up to the office, and a young lad came up to my office, gave me the prices, and I told him I would let him know.

Q. You don't recall the name of this young man?

A. I wouldn't know him if I would see him. I know he was only there a few minutes and I know he was a young fellow, I would say around about nineteen, twenty years old.

Q. But the man came in response to your telephone call to the Journal, is that right?

A. Yes.

Q. And you asked for the rates, is that right?

A. I asked for the rates for half-page and whole-page, and then twice or three times a week.

Q. And you were given those figures, is that right?

A. I was given those figures.

Q. And did he say anything further to you?

A. Well, I told him I was going on the radio at the same time.

Q. You told him you were going on station WEOL?

A. On radio station WEOL at Elyria, and I figured on the announcement coming out on the radio and a half or full page ad at the same time.

[fol. 614] Q. And what did this young man say when you told him you were going on the radio at the same time?

A. He told me I couldn't have an ad in the paper if I was on the radio.

Q. Did he say anything further at that time?

A. No, I just asked him why and he says, "I only work there. That's the rule."

Q. Did he give you any further information about that ruling?

A. No, I just told him I was running my business, if they didn't want my ad they could run their business, that's all there was to it.

Q. I take it that was all that was said at that time?

A. With that young man, yes.

Q. Subsequent to that conversation did you have another conversation with a representative of The Lorain Journal?

A. Not at my place. I was to the printer after some printed matter when Mr. Self—I think that's the name—was at McCahon's Print Shop.

Q. That's spelled M-c-C-a-h-o-n. Would you recognize Mr. Self if you saw him, do you think?

A. I wouldn't swear that I would. He was a short, heavy-set fellow, and I was too darned mad when I was talking to him. I was laying it out in pretty plain English, but he told me in front of Mr. McCahon and his father that as long as I was on the radio I would not have any advertisement in the Lorain Journal, they were running an in-[fol. 615] dependent paper, they could accept or reject any advertisement that they chose.

Q. Did he give you any other reasons?

A. Not any more than that they were running their own business the same as I was running mine; if they wanted the ad they would take it, if they didn't want it they didn't have to have it, they had plenty of money to live without it. Well, I knew that.

Q. Did Mr. Self say anything about the reason for that policy, other than that?

A. Not any more than that, they was running their own business and if they wanted to accept it they would accept it, if they didn't want to accept they wouldn't, but as long as I was on the radio they wouldn't accept my ad.

Q. You ceased advertising on the radio about what time?

A. January 1, 1950.

Q. January 1, 1950?

A. Yes, sir.

Q. Was there any special reason for your ceasing your radio advertising?

A. Well, our contract had run out and I was planning on moving, which I have moved, the studio a few doors further down the hall in larger quarters, remodeling, and I didn't see the necessity of paying for advertisements when we wouldn't be open to render any service.

[fol. 616] Q. Isn't it true that this address of 212 Broadway which you gave us is your new address?

A. That's the news address. The old one that I'm talking about when the Journal rejected me was at 214, that's one door down.

Q. Did you make any subsequent effort to place an advertisement in the Lorain Journal, Mr. Messmore?

A. One day last week, I think it was, or the week before last, I felt a little bit tired and I sat down by my desk, picked up the telephone and I called the Journal.

Q. Was there anybody present in the room when you called the Journal?

A. Not to my knowledge at that particular time. I thought I was alone. The young lady answered the phone. I told her I was figuring on putting in an ad stating that we had moved into much larger quarters, I would like to arrange to see about an advertisement, full page or half page to start, and she talked to somebody behind her, turned around, or possibly aside of her, but she was talking to some other gentleman, told him who was talking and I was informed that they would take the ad. I told them I have not been on the radio since January 1st, I cancelled the radio January 1st, and she informed me they would accept an advertisement if I come down and laid the ad down and gave them the cash. That struck me kind of funny, I said, "What's the matter, is the Journal going [fol. 617] broke that they have to have cash?" That got a laugh out of her. I said "Before any man comes up for the ad, wasting your time, his time or mine, I want to make this statement. I may apply for an ad on the radio and come out with both ads the same night." She turned around, spoke to somebody and I heard a man's voice. I wouldn't recognize it, but it was a man's voice answering here "nothing doing." So she said to me, "Under those

conditions they couldn't take the ad." Well, the very funny part of the whole thing was a gentleman by the name of Saddler or Seidler spoke up, he says, "May I talk to you a minute, Mr. Messmore?" I looked up and here in the archway to the room that gentleman (indicating Mr. Seidler) was standing listening to the whole conversation. The *D*oor was open and he had walked in. I didn't know who he was, and he showed me his book, picture in it, and name, investigator for the department here of some kind. Now he heard my end of the conversation, so he could from my answers, my end of it, judge the other end. I said, "You mean to tell me if I go on the radio you people refuse the ad?" He said, "That's my information." He heard that part of the conversation, and since that I have had no conversation with the Journal.

Q. Now, Mr. Messmore, could we pass to one other item? Have you ever heard radio station WEOL while you were [fol. 618] outside of the State of Ohio?

A. Oh, I have had it when I'm up in Michigan, I got it on the Pennsylvania Pike.

Q. Where were you located in Michigan when you heard it?

A. I was up in Lansing. I have had it coming in from Chicago from the convention last summer.

Q. When you were in Michigan—let's take one question at a time—on what radio did you hear it?

A. On the one in my car.

Q. And do you recall about when that was that you heard it?

A. Oh, that would be along—well, the last time I heard it was about four or five weeks ago, three weeks ago, when I was up at the High School.

The Court: High School where?

The Witness: The Sexton High School in Lansing, Michigan, on the way out I always pull in the news.

Q. What program did you hear when you listened to the radio station, do you recall?

A. That was on the news program. I very seldom listen to anything only just the news, pick that up.

Q. Did you ever hear the radio station when you were in Pennsylvania?

A. Oh, yes, I have had that in several different places in Pennsylvania, Erie, Oil City, Franklin.

[fols. 619-625] Q. Did you hear it when you were in Erie?

A. I have heard it coming out of Erie. I wouldn't say I was in the heart of the town.

Q. Were you still on the Pennsylvania side?

A. Oh, yes. I have heard it clear down past Harrisburg, when I was down on the Pike going to New York.

Q. Could you give me a few more details about the time you heard it in Erie?

The Court: We will take a 15-minute recess.

(Recess taken.)

Mr. Altman: No further questions, your Honor.

Mr. Fulton: No examination.

Mr. Kramer: If the Court please, I would like to make a brief statement.

I heard about the editorial in the Press yesterday, commenting on the well-known fact that the docket here is crowded and that accounted in part, at least, for the ill-mannered haste in which I commenced examining these witnesses, and as so often proved, haste makes waste, because we are now out of witnesses for the day, and perhaps, in time, I shall learn the lesson.

We are going to call all the remaining witnesses except Mr. Self and one other tomorrow whether we get through them or not, so this unseemly occurrence shall not happen again.

The Court: We will adjourn until tomorrow morning.

* * * * * * *

[fols. 626-629] Mr. Kramer: I move the witness' answer on Page 523 reading "That was my interpretation" be stricken from the record.

Mr. Fulton: That's all right.

The Court: Any objection to that?

Mr. Fulton: No objection to that.

* * * * * * *

[fol. 630] WILLIAM C. MCCONNELL, a witness called by plaintiff, being first duly sworn, testified as follows:

Direct examination of William C. McConnell.

By Mr. Seidler:

Q. What is your name, please?
A. William C. McConnell.
Q. Would you spell that?
A. M-c-C-o-n-n-e-l-l.
Q. What is your address?
A. My home address is 660 Oberlin Avenue, Lorain, Ohio.
Q. What is your business?
A. I am an automobile dealer.
Q. Where is your business?
A. 1797 Broadway.
Q. What city?
A. Lorain, Ohio.
Q. How long have you been in that business?
A. I am in my fifteenth year.
Q. And what make automobiles do you deal in?
A. Buicks.
Q. Do you advertise over radio station WEOL?
A. Yes, sir.
Q. When did you first advertise over WEOL?
A. That was about the middle of October, 1948, the beginning.
Q. That is when your first broadcast was heard?
[fol. 631] A. That's right.
Q. Now, following your first sponsored broadcast over WEOL did you have any conversation with individuals known by you to be representatives of the Lorain Journal?
A. Yes.
Q. With whom, sir?
A. I had, as I recall it, two conversations with a Mr. Maus. M-a-u-s, I think he spelled it. That was in the first week of my first broadcast.
Q. You say two conversations with Mr. Maus? Any others?
A. One with Mr. Self.
Q. As to the first conversation with Mr. Maus, where did it take place?

A. In my office.

Q. And when?

A. It was about two days after my first broadcast, which would be on a Wednesday.

Q. Was anyone else present at this conversation?

A. No.

Q. Will you please relate to the court to the best of your recollection the substance of that conversation? that is, what was said by you to Mr. Maus and what he said to you?

A. Well, Mr. Maus talked at some length on the merits of newspaper advertising over that of radio advertising, of course it was merely a selling job to get me to go back or [fol. 632] to continue my advertising in the Lorain Journal instead of over WEOL.

Q. Had you had any previous dealings with Mr. Maus?

A. Yes, I think he was assigned to my account.

Q. By the Lorain Journal?

A. By the Lorain Journal. He had called on me previously.

Q. As to the second of these conversations with Mr. Maus, where did this take place?

A. In my office.

Q. And when with relation to the first conversation with him?

A. On a Friday, two days after the first conversation.

Q. Was anyone else present at the second conversation other than the two of you?

A. No.

Q. Will you please relate the substance of the second conversation?

A. Well, it was practically the same as the first. He brought in a few more arguments in connection with the merits of newspaper advertising over that of radio advertising.

Q. Specifically, can you to the best of your recollection state what Mr. Maus said to you? In other words, try to relate more fully the conversation that took place.

A. Well, he amplified on the circulation of the Lorain Journal and the coverage that they had, and he further [fol. 633] stated that the radio station was an Elyria institution and it would tend to take trade out of Lorain,

where the Lorain Journal's policy was to build up the Lorain trading area for the Lorain merchants. And he also contended that the Lorain Journal would not accept any advertising from merchants outside of the Lorain area.

Q. Did you make any specific response to those comments?

A. Yes, I did. I cited several instances where I had noticed advertising in the Lorain Journal for merchants outside of Lorain.

Q. Do you think of anything further that was said in the course of this conversation?

A. Well, there were many details discussed at the time; most of it was applicable to the merits of newspaper advertising over radio advertising.

Q. It is the details that we desire, Mr. McConnell. I take it then you stated to the best of your recollection the details that you have recalled?

A. Well, there was probably, I know there was a lot more conversation, but to me it wasn't important because I wasn't particularly interested in the advertising program at that time.

Q. Now, as to the conversation with Mr. Self, where did that take place?

A. In my office.

Q. And when?

[fol. 634] A. The following Monday.

Q. Was anyone else present?

A. No.

Q. Now, again, I ask you to recall as best you can the details of that conversation, what Mr. Self said to you and what you in turn responded to him.

A. Well, Mr. Self called me first—I won't go into that; that is part of it—but he came in to ask me if I intended to continue.

Q. Did you call Mr. Self and ask for the interview?

A. No. I don't know whether you wanted me to give that. Mr. Self called me and asked for an interview.

Q. I want all the facts.

A. Which I granted to him. And he came up in just a few minutes and he reiterated most all of the ground that Mr. Maus had covered in connection with the merits of newspaper advertising over radio advertising.

Q. Don't state he reiterated. Can you state just exactly what he told you?

A. Well, he brought in a great deal of statistics on the value of newspaper advertising as it is appraised by national advertisers, merchants associations, and various organizations, figures and statistics that I don't remember. He asked me if I had a contract with the radio station. I stated that I did. And while he didn't—he in-
[fol. 635] ferred that I should cancel it and continue to advertise in the newspaper exclusively. And I gathered from his conversation that the Journal might cancel my Journal advertising.

Q. Not what you gathered, but did he tell you this specifically?

A. Yes. I asked Mr. Self if I continued to advertise on the radio if the Lorain Journal would cancel my newspaper advertising in their paper. He didn't answer that question directly, and I asked him again. I imagine I asked the question three or four or five times before I got a positive answer from him. And he said yes, that if I continued to advertise on the radio that they would cancel my Journal contract.

Q. Did the conversation end at that point?

A. Yes, it did.

Q. Mr. McConnell, I hand you Government's Exhibit 156 and ask you if this is a copy of the letter you received from the Lorain Journal.

A. Yes, it is.

Q. What is the date on the letter?

A. October 25, 1948.

Q. How soon following your conversation with Mr. Self did you receive this letter?

A. The next day.

[fol. 636] Mr. Seidler: If the court please, I wish to offer this Government's Exhibit 156 in evidence.

The Court: It may be received.

Q. Mr. McConnell, did you wish to advertise in the Journal as well as over WEOL?

A. Yes, I did.

Q. Did you so state to Mr. Self?

A. Yes, sir, I did.

Q. Did you explain to him why?

A. Well, I felt that if I had two media of advertising

that I would definitely derive benefits from it and I would get greater coverage and I would reach a great many people that the Lorain Journal circulation did not reach.

Q. Mr. McConnell, you are, I take it, a Buick agency?

A. That is correct.

Q. You sell Buick automobiles?

A. That is correct.

Q. Where are the automobiles shipped from that you sell?

A. Flint, Michigan.

Q. Do you ever order an automobile for direct shipment to the customer?

A. No, sir, I never have.

Q. Do you ever order a Buick automobile on the basis of a preexisting order which you have from a customer?

A. For shipment to me, yes.

Q. For shipment to you, yes. But you order the automobile on the basis of the order which you have from the [fol. 637] specific customer; is that it?

A. Yes.

Q. Mr. McConnell, is any part of the cost of your advertising on WEOL borne by the Buick Company?

A. Would you ask that question again?

Q. Is any part of the cost of your advertising over WEOL borne by the Buick Company?

A. No. No part of it borne by the company.

Q. Do you pay for the entire cost of your advertising?

A. Over WEOL?

Q. Over WEOL.

A. Yes.

Q. Now, as to your advertising in the Lorain Journal, was any part of your advertising in the Lorain Journal paid for by the Buick Company or General Motors or by an agency thereof?

A. Yes, by Buick.

Q. Now, was all or any part of the advertising copy that appeared in your advertisements in the Lorain Journal prepared by the Buick Company or its advertising agency?

A. All of it was prepared by Buick and their agencies.

Q. And where was Buick located?

A. Flint, Michigan.

Q. And the agency?

A. Well, I think their general office was in Detroit.
[fol. 638] Q. You don't know?
A. I am not sure of that.
Q. Now, the copy of your advertisements which originated with the Buick Company in Flint was sent directly to the Lorain Journal or did it come to your office?
A. It went direct to the newspaper and I got a copy of it.
Mr. Seidler: Thank you.
Mr. Fulton: No cross-examination.
Now, if your Honor please, this witness, without objection on my part, as did two or three others in the past, testified, and others also, that he and they wished to advertise in the Journal. I didn't object. I didn't object to it when this witness testified, for the reason that I know that your Honor, when the proper time comes, will sift the wheat from the chaff. But I am going to move that the answer given by this witness and similar answers by others be stricken because what the witnesses or advertisers wished to do does not bear on the basic question that is to be decided here.
I think your Honor knows I am doing that largely for the record, maybe belatedly.
The Court: I appreciate that, but I do want to know why the desire of a person who wishes to use the facilities of both the broadcasting station as well as the newspaper is of no material value here. If there is no demand for use [fol. 639] of a product or of a service, then, of course, it is of no moment what they did; but if there is a demand and call for it, it may be another proposition.
Mr. Fulton: It may or may not be. And I say this to your Honor, that the use of the facilities of their paper does differ in law than the wish of one of these witnesses to ship a commodity over the Erie Railroad Company. In other words, the wish to ship over the Erie Railroad Company can become a lawful demand that must be yielded to by the railroad. I want to point out that distinction that arises in my mind.
The Court: Well, you are talking about the right of any purveyor or any supplier of goods or services of picking his own customers?
Mr. Fulton: That is right.
The Court: Well, of course, it is fully understood that

is one of the defenses to the charge made by the government in this case, but I do feel, likewise, that testimony to the effect that one who is in need of advertising over the radio as well as in newspapers may express a desire to use both facilities. Now, if there is no need for both of those facilities, the answer may be altogether different. For that reason the objection will be overruled.

[fol. 640] Mrs. Ruth Stevens, being called as a witness by plaintiff and first duly sworn, testified as follows:

Direct examination of Mrs. Ruth Stevens.

By Mr. Seidler:

Q. Please state your name.
A. Ruth Stevens.
Q. Your address, Mrs. Stevens?
A. Home address 5501 Eastlake Road, Lorain.
Q. That is in Lorain?
A. Yes.
Q. How do you spell your name?
A. S-t-e-v-e-n-s.
Q. What is your business?
A. Roller skating and dancing. I run the Coliseum in Lorain.

Mr. Kramer: I can't hear you.
The Witness: I can't talk any louder. I have a cold.

Q. How long have you owned the Coliseum?
A. Fourteen years.
Q. Where is the Coliseum located?
A. Stop 104 Westlake Road, Lorain, Ohio.
Q. Mrs. Stevens have you ever advertised the Coliseum over radio station WEOL?
[fol. 641] A. Yes.
Q. When?
A. Beginning in October, 1948.
Q. Did you at that time have a contract with the Lorain Journal for advertising?
A. Yes.
Q. Mrs. Stevens, I hand you Plaintiff's Exhibit 157 and

ask you to tell me if this is a letter which you received from the Lorain Journal?

A. Yes, it is.

Q. And the date?

A. October 25.

Mr. Seidler: If the court please, I wish to offer this in evidence, Government's Exhibit 157.

The Court: It may be received.

Q. Now, Mrs. Stevens, following the receipt of this letter did you have any conversation with an individual known by you to be a representative of the Lorain Journal?

A. Yes.

Q. With whom did you have the conversation?

A. Mr. Self.

Q. Where did it take place?

A. In his office.

Q. When was it?

A. About a week after that, or about a week before I [fol. 642] got a letter for cancellation.

Q. You say it was about a week before you received this letter?

A. Yes.

Q. Will you state to the court to the best of your recollection the substance of this conversation, and by that I mean state what Mr. Self said to you and what you in turn said to him.

A. I took an ad in for an opening dance and it was to be about a week before the contract was cancelled, and the advertising man that tood care of my advertising at the Journal sent me in to Mr. Self, and I went in to him. He asked me to come into his office and he explained the merits of advertising over the paper and the merits of advertising over their.

Q. Specifically, what did he say were the merits he stated to you of advertising over the newspaper?

A. Well, he just said it was better advertising, and he told me I couldn't have an ad in the paper if I advertised on WEOL. So I kept on advertising over WEOL.

Q. Did you respond to that statement by him?

A. Did I answer him, do you mean?

Q. Yes.

A. I told him I saw no reason why he or anybody else could tell a person where to spend their money. If they

wanted to advertise in the newspaper and over the air, too, [fol. 643] it was not anybody's business.

Q. Did you tell Mr. Self you wished to advertise in the Journal as well as over WEOL?

A. That's right.

Mr. Fulton: An objection to that.

The Court: Overruled.

Q. Can you recall any further details of this conversation?

A. No, I don't, not to amount to anything.

Q. Do you now advertise in the Lorain Journal?

A. Yes. My business associate, Mr. Timko, has a contract with them.

Q. Do you know of your own knowledge that the Coliseum does advertise in the Journal?

A. Yes.

Q. Do you now advertise over station WEOL?

A. No.

Mr. Seidler: Thank you.

Mr. Fulton: That is all.

[fol. 644] Harold G. Pyle, a witness called by plaintiff, being first duly sworn, testified as follows:

Direct examination of Harold G. Pyle.

By Mr. Seidler:

Q. What is your name, sir?
A. Harold G. Pyle.
Q. How do you spell that?
A. P-y-l-e.
Q. What is your address?
A. Business address?
Q. Your home address.
A. Home address 23731 Russell Road, Bay Village, Ohio.
Q. Your occupation, Mr. Pyle?
A. I am in the banking business.
Q. With whom are you connected?
A. The Central Bank at 20th and Broadway, Lorain.
Q. And your capacity with the bank?

A. Vice-president and secretary and a member of the Board of Directors.

Q. Did you, and when I say "you" I mean the bank, sir, ever enter into a contract with Station WEOL, sponsor a broadcast of that station?

A. Yes, we did.

[fol. 645] Q. Do you recall when?

A. In August, '48.

Q. Do you recall what type of a broadcast it was?

A. To broadcast the Lorain High-Shaw High foot ball game.

Q. Do you recall when that game was taking place?

A. I believe it was November 18th. I am not too sure of that date.

Q. Now, prior to the playing of that game did you attempt to place an advertisement in the Lorain Journal announcing your broadcast?

A. Yes, we did.

Q. Please tell the Court what you did in that effort to place this advertisement?

A. Miss Goff, who was a reporter for the Journal, came into see me, or had been coming into the bank, and I asked her to tell Mr. Stillman to come and see me about an ad I would like to run.

Q. Who is Mr. Stillman?

A. Mr. Stillman is in the advertising, handles our advertising with the Lorain Journal.

Q. Did Mr. Stillman come to see you at the bank?

A. Yes, he did.

Q. Do you recall when?

A. It was a week or two before our scheduled broadcast.

[fol. 646] Q. Was anyone else present at the time of this conversation?

A. No, I believe not.

Q. Will you please relate to the best of your recollection exactly what was said during this conversation, that is, what was said to you and what you responded to Mr. Stillman.

A. I just said I felt my ad should be run.

Q. State just what was said.

A. And he refused to run my ad.

Q. You say Mr. Stillman stated to you——

A. That he would not run my ad involving a radio broadcast program.

Q. Will you give us his words as near as you can recall them?

A. Well, I would say he just said that they wouldn't run my ad involving the announcement of that program.

Q. And what did you respond to that?

A. I was quite surprised that that was their policy and naturally I couldn't do anything else.

Q. Did you make a response to Mr. Stillman's statement?

A. Yes, I did. We got into quite a discussion as to the merits and demerits of radio advertising compared wi*ht* newspaper advertising.

Q. Can you elaborate on that discussion?

A. Well, the arguments used against the running of the ads covered the radio broadcasting was that the Lorain [fol. 647] Journal was t*yr*ing to protect the Lorain market for the Lorain merchants. And our general discussion then led into whether or not one service supplemented the other; and that was my view.

Q. Your view which you stated to him was what, sir?

A. That the one type of advertising supplemented the other. That I felt that both were effective and especially with institutional advertising.

Q. Did he respond to this?

A. Well, the response was somewhat on the same order, that they did not wish to carry the radio program.

Q. Now, did you at this time have a contract with the Lorain Journal?

A. Yes, we did.

Q. Did Mr. Stillman discuss with you the advisability of advertising over WEOL with relation to your contract with the Journal?

A. I beg pardon?

Q. Did Mr. Stillman discuss with you the advisability of advertising over WEOL in relation to your contract with the Lorain Journal?

A. Yes, it was suggested we try the radio broadcasting and try to sample its effectiveness. There was reference made in our discussion in that connection.

Q. How did you in fact advertise the broadcast of this [fol. 648] football game?

A. We had 13,000 folders printed in the form of a ticket or reserve seat, so to speak, and had them distributed. That is, we had a group. I believe they were young school children, distribute them house to house.

Q. Following the football broadcast did you have any conversation with an individual known by you to be a representative of the Lorain Journal?

A. Yes, one time later.

Q. With whom was this conversation?

A. Mr. Bremer.

Q. When did it take place?

A. It was sometime after, I would say a month after our broadcast.

Q. Where did it take place?

A. At our bank.

Q. Was anyone else present during the conversation?

A. No.

Q. Will you state the substance of the conversation?

A. Well, it was a general conversation, starting off, just a friendly atmosphere and in generalities, and led into the merits of newspaper advertising and radio advertising, and naturally the question came up about the market being protected.

Q. You say the question came up. Did Mr. Bremer tell [fol. 649] you what you are about to state?

A. Yes, the same, he reiterated——

Q. What actually, did he say?

A. Reiterated the same policy of protection of the Lorain market.

Q. And your response to that?

A. Was the same as I had given Mr. Stillman, that I felt our marketing area was much larger and it involved people over the country rather than being strictly restricted to Lorain.

Q. Have you advertised over WEOL since the broadcast of the football game?

A. No, we haven't.

Q. You at present advertise in the Lorain Journal?

A. Yes, we do.

Q. For the purpose of clarifying the record, Mr. Pyle, when I have referred to "you" and you have responded

to me by saying "we", I have been speaking of the Central Bank. Now, have you, too, been speaking of the Bank yourself?

A. I have, in my discussion with Stillman and my discussion with Mr. Bremer, those were personal discussions, as I say, but the contract to broadcast was approved by the Board of the Central Bank Company.

Q. The contract to broadcast and the contract with the Lorain Journal was approved by the Board of the Bank, [fol. 650] and you had the authority to place advertisements with the Journal of the Board?

A. That's right.

Mr. Seidler: Thank you.

Cross-examination of Harold G. Pyle.

By Mr. Fulton:

Q. You were advertising a basketball game?
A. Football game.
Q. You called it Lorain-Shaw?
A. That's right.
Q. These questions may seem very simple, but I think they are essential. Lorain High is a high school located where?
A. Lorain, Ohio.
Q. And the Shaw High School is a high school located where?
A. Cleveland, Ohio.

Mr. Fulton: That is all.

[fol. 651] William Givner, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of William Givner.

By Mr. Seidler:

Q. Will you state your name, please?
A. William Givner.
Q. How do you spell that?

A. G-i-v-n-e-r.
Q. Your home?
A. 942 Highland Boulevard, Lorain, Ohio.
Q. What is your business?
A. We are in the luggage, jewelry and loan department business.
Q. When you say "we"?
A. We are an incorporation. I am president of the incorporation.
Q. And the other officers are members of your family?
A. Yes, sir.
Q. How long have you been in that business?
A. We have been in that business for ten years.
Q. Where is your place of business located?
A. At 962 Broadway, Lorain, Ohio.
Q. Have you, and by "you" I mean Givners at any time entered into a contract with Station WEOL for adver-
[fol. 652] tising time?
A. Yes, sir.
Q. When?
A. In December of '49.
Q. Did Givners at that time have a contract with the Lorain Journal?
A. Yes.
Q. Following the first broadcaast of your advertisement over WEOL were you present at any conversation with individuals known by you to be representatives of the Lorain Journal?
A. Yes, sir.
Q. Now, with whom did you speak, sir?
A. I spoke to Mr. Jordan who was the ad man and to Mr. Wilson.
Q. You say Mr. Jordan is the ad man. Had you seen him before this conversation?
A. Yes, sir.
Q. He had customarily taken your advertisements for the Journal?
A. That's right.
Q. Did you know who Mr. Wilson was?
A. I knew Mr. Wilson. He used to take ads too before Mr. Jordan took over.
Q. Do you know what his capacity was at the time he
[fol. 653] spoke with you?

A. At the time he come in the store?
Q. Yes.
A. Yes, he was introduced to me as the head of the classified department.
Q. Introduced to you by whom?
A. By Mr. Jordan.
Q. Was anyone else present during this conversation?
A. Yes, my Dad, my brother and my brother-in-law.
Q. Will you relate to the Court, to the best of your recollection, the details of the conversation, what was said to you and what you in turn replied?
A. Mr. Jordan introduced Mr. Wilson to us and said that they had caught our radio program on WEOL and that it was the policy of the paper not to accept any ads of any advertisers that advertised over WEOL, that unless we discontinued advertising on WEOL they would refuse to take our ads.
Q. Did you reply to that?
A. We told them it was our money——
Q. You say "we". Who was that?
A. I spoke for the organization.
Q. I see.
A. I said it was our money and we would spend it where we saw fit.
[fol. 654] Q. Did you state to Mr. Wilson that you wished to advertise in both the Journal and over Station WEOL?
A. Yes.
Q. What did he reply to that?
A. He said we had our choice, either the radio or the paper.
Q. Do you recall any further details of your conversation?
A. Well, it just about ended at that. There was no use starting an argument with him. He was just working for the paper.
Q. Do you now advertise in the Lorain Journal?
A. No.
Q. Do you advertise over Station WEOL?
A. We advertise over Station WEOL.
Q. Subsequent to your conversation, that is, following this conversation, did you make any effort to place an advertisement in out of town papers such as the Cleveland newspapers?

A. No, sir.

Q. Will you tell the Court the reasons why?

A. Well, the Cleveland papers don't get the coverage in Lorain that the Journal does. I mean just about everybody in Lorain does get the Journal delivered to their home, and the Plain Dealer is mostly on the stands, and I don't believe they have anywhere near the coverage.

Q. Now, you stated the nature of your store. Can you tell us what merchandise is handled by your store, sir?

[fol. 655] A. Well, we handle luggage.

Q. Anything else besides luggage?

A. Jewelry and clothing.

Q. Luggage, jewelry and clothing?

A. Yes, sir.

Q. Can you tell us where this merchandise comes from, the luggage, jewelry and clothing?

A. Well, we have luggage that comes from Denver, Colorado, from New York, Philadelphia.

Q. That is the luggage?

A. Luggage, yes.

Q. Coming from Denver, Colorado, and New York and Philadelphia?

A. Yes, sir.

Q. Delivered by the manufacturer?

A. That's right.

Q. And the jewelry?

A. The jewelry, we get some from Cleveland, from Chicago, New York.

Q. And the clothing?

A. The clothing mostly comes from Philadelphia.

Q. Did you ever have occasion to order any of these items of merchandise for a customer based upon that customer's pre-existing order?

A. Yes, sir.

[fol. 656] Q. You understand what I mean? That is, where you have ordered something from outside of the State of Ohio, and that merchandise was based on the customer's order.

A. Yes.

Q. Do you ever have merchandise shipped directly from the manufacturer to the customer?

A. No.

Q. It goes to your store?

A. Goes right to our store.

Q. The products which we have mentioned, were they advertised in the Journal?

A. Yes.

Q. And are they now advertised over Station WEOL?

A. Yes.

Q. Mr. Givner, you made reference in speaking of the merchandise which comes from out of the state. Did you mean that the merchandise is shipped directly to you from out of the state, directly from the manufacturer?

A. Yes, directly to me.

Q. It doesn't go through any local jobber or distributor?

A. No.

Mr. Seidler: That is all.

Mr. Fulton: No examination.

Mr. Seidler: You may step down.

[fol. 657] Edward A. Brosky, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Edward A. Brosky.

By Mr. Altman:

Q. Would you state your name, please?

A. Edward A. Brosky.

Q. What is your home address, please, Mr. Brosky?

A. 1347 Hawthorne, Lorain, Ohio.

Q. What is your occupation?

A. Secretary-manager of the First Federal Savings & Loan Association of Lorain.

Q. How long have you been in that business?

A. 21 years.

Q. And where is the First Federal located?

A. 1946 Broadway, Lorain, Ohio.

Q. Does the First Federal Savings & Loan advertise in the Lorain Journal?

A. Yes, sir, it does.

Q. What is the arrangement with the paper? Do you have a contract?

A. We have a contract.

Q. How long have you been advertising with the Journal?

A. Well, we have had a contract for the past three years, [fol. 658] roughly. I don't remember exactly. But we did advertise prior to that without a contract?

Q. You have a contract now?

A. Yes, sir, we do.

Q. Did you have a contract in the late summer of 1949, about July and August of 1949?

A. Yes, we did.

Q. At about that time, that is, in about July or August, the summer of 1949, did you sponsor a program over radio station WEOL?

A. Well, I would like to change that time on there. It wasn't July, 1949. It was November, 1948 to February, 1949. We were one of the sponsors of what they call the Polish Hour, a half hour program, one of six sponsors.

Q. Let me get the date straight, now. That was November, 1948?

A. That was from November, 1948 to February, 1949, 13 weeks.

Q. Well, let me amend the other question, then. At this time, that is, November, 1948 until February, 1949, did you have a contract to advertise in the Lorain Journal? By "you" I mean the First Federal.

A. Yes, we did.

Q. Now, what sort of a program was this that you were one of the sponsors for?

A. This was what is called the Polish Hour, and it was [fol. 659] music, records in Polish and the wording was in Polish for the advertising.

Q. Was the advertising also in Polish?

A. Yes, it was.

Q. Subsequent to your beginning the advertising over WEOL, did you have any conversation with representatives of the Lorain Journal?

A. About advertising on the radio?

Q. Yes, sir.

A. No, we didn't.

Q. Did you at any time since you began advertising on WEOL have you conversations with the representatives of the Lorain Journal?

A. Yes, after we were on about ten weeks on the radio program.

Mr. Altman: I wonder if the reporter would read back the question before the last one.

(Previous question read by reporter.)

Q. In other words, when you were answering that you meant before you advertised on the radio?

A. Before we advertised on the radio we did not have any conversations with the Lorain Journal representatives.

Q. That was before you advertised that you had no conversations?

[fol. 660] A. That's right.

Q. While the program was running, did you have conversations?

A. Not while it was running, until about ten weeks after we were on. That was the first conversation that we had.

Q. Could you give me a little more precision as to the time about when was the conversation?

A. What do you mean by time?

Q. Well, in what month?

A. Oh, I would say it was probably in January, 1949.

Q. January, 1949?

A. The latter part of January.

Q. And with whom was the conversation?

A. Mr. Stillman, a representative of the Lorain Journal.

Q. Did you know Mr. Stillman from previous dealings with him?

A. Oh, yes, he took care of our advertising.

Q. What was the conversation—where was the conversation held?

A. In our office, the office of the First Federal.

Q. Would you state what was said in the conversation both by you and by Mr. Stillman?

A. Mr. Stillman mentioned the fact that if we advertised on the radio we could not advertise in the Journal and, of course, he mentioned the fact that the reason for [fol. 661] that was that they did not permit outside advertisers in the Lorain Journal, so they would not permit us to advertise on the outside, outside of Lorain City.

Q. And what did you say to him?

A. Well, I told him we would like to continue adver-

tising on both. We felt it was good advertising and we wanted to do it.

Q. What did Mr. Stillman reply?

A. Well, he replied that we could not have both, we would have to decide one way or the other.

Q. Did he give you any reason?

A. Well, he mentioned the fact that they wouldn't permit outside advertisers to advertise in the Lorain Journal and that was the main theme of his discussion.

Q. How did the conversation end?

A. Well, I told him I would take it up with our Board of Directors and decide what we were going to do, which we did. We met with our Board and our Board of Directors decided then to stay with the newspaper because we had to use the newspaper, in fact, for our publication of meetings and our annual statements. That is a must.

Q. Your publication of those are legally required?

A. That's right. Of course, we could use any newspaper in the County, but being that we had one newspaper in Lorain we wanted to stay with the Lorain paper, we didn't [fol. 662] wish to go outside of the city limits for that type of advertising.

Q. Most of your—I don't think you call them depositors—are in Lorain, is that right?

A. Savings share accounts is what we call them.

Q. Most of your savings share accounts are with people living in Lorain, is that right?

A. The majority.

Q. Did you cancel your contract with WEOL?

A. No, we did not cancel it. It ran out. We had about three more weeks to go and they permitted us to run it out.

Q. When you say "they"——

A. The Journal, in other words.

Q. Who in particular stated that it was all right to let the program run out?

A. Mr. Stillman.

Q. Mr. Stillman?

A. Yes, sir.

Q. Did he say that on his own authority or did he say someone had told him?

A. Well, I wouldn't remember whether it was that, or one way or the other.

Q. Do you now advertise over radio station WEOL?

A. No, we do not.

[fol. 663] Q. When you had these conversations with Mr. Stillman did the First Federal Savings & Loan Association give consideration to advertising its meetings in the Cleveland newspapers?

A. No, we wouldn't think it would be of any benefit to us to do that.

Q. Can you tell me under what Federal Agency the First Federal Savings & Loan Association is regulated?

A. We are chartered and supervised by the Federal Home Loan Bank a Federal Agency.

Mr. Altman: No further questions.

Mr. Fulton: No examination.

The Court: Let me ask you about one comment you made. You said "they permitted us to use the radio until the contract ran out."

The Witness: We had about three more weeks to go on our contract.

The Court: They gave their consent to let you do that?

The Witness: That's right. We did not have to immediately cancel our contract. It was a 13-week contract is what it was.

The Court: And you got their permission to let it run out?

The Witness: Well, we didn't have to cancel it imme-

[fol. 664] diately.

The Court: Who was it gave you that permission?

The Witness: Mr. Stillman.

The Court: What was Mr. Stillman's position?

The Witness: I don't know what his position was, but he did take care of advertising for the Lorain Journal. I don't know what title he had.

The Court: Did you try to go over Mr. Stillman's head and talk to someone else in the Journal?

The Witness: No, we didn't.

The Court: Mr. Stillman gave you the permission then to do it?

The Witness: That's right.

The Court: That's all.

Mr. Altman: Any questions, Mr. Fulton?

Mr. Fulton: No questions.

Mr. Altman: Step down.

[fol. 665] LEONARD OLDFIELD, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Leonard Oldfield.

By Mr. Altman:

Q. Would you state your name, please?
A. Leonard Oldfield.
Q. What is your home address, Mr. Oldfield?
A. 155 Hamilton Street, Amherst, Ohio.
Q. And what is your business?
A. Electric sewer cleaning.
The Court: I didn't get your occupation.
The Witness: Electric sewer cleaning.

Mr. Kramer: Can't you talk just a little louder, sir?
The Witness: O.K.

Q. How long have you been in that business, Mr. Oldfield?
A. About nine years.
Q. And where is your place of business located?
A. Same address.
Q. That's in what city?
A. Amherst, Ohio.
Q. Amherst, Ohio?
A. Yes, sir.
[fol. 666] Q. For what period of time did you advertise in the Lorain Journal?
A. The last eight years, I think.
Q. Did you have a contract?
A. Yes, sir.
Q. Did you ever consider advertising over WEOL?
A. Yes, sir, we did at one time. I think it was in 1948.
Q. Did you enter into a contract with WEOL?
A. Yes, we did.
Q. About what time was that, do you recall?
A. I believe it was in October, 1948.
Q. And did you start to broadast over WEOL?
A. Yes, we did.
Q. Following the beginning of your broadcasts, did you have any conversations with representatives of the Lorain Journal?

A. Yes, sir, after three or four days, why, we happened to pick up the paper and we noticed our ad was out of the paper and we called to find out why it was left out, and they had another man call us, the girl did.

Q. Just a moment. Let's go into the practices you had with the Journal. Your ads ran regularly in the Journal?

A. Yes, sir.

Q. And that was pursuant to a contract you had with the Journal?

A. Yes, sir.

[fol. 667] Q. Do you remember how frequently your ads apepared?

A. Every night.

Q. What sort of ads were they, display or classified?

A. Classified, I believe.

Q. And they appeared every night. Did you give such instructions for them to appear every night?

A. Yes, sir.

Q. Now let me repeat that. Did you have a standing arrangement so that they appeared every night?

A. Yes, sir.

Q. You didn't have to call the Journal every day?

A. No.

Q. That is, they appeared every night without further instructions?

A. Yes.

Q. What happened after you noticed your advertisement was no longer appearing?

A. Well, I called on the 'phone and asked about it and there was a girl answered the telephone.

Q. Just a moment. Do you know to whom you were speaking?

A. No, I don't know to whom I spoke.

Q. You know you called the 'phone number and a girl answered?

A. Yes.

Q. What did she say?

[fol. 668] A. She said she would have someone else call up, and in about an hour or so some man called me and told me——

Q. Did he identify himself?

A. I believe he did at the time, but I don't remember his name.

Q. You don't recall what his position was with the newspaper?

A. No, I don't.

Q. What did he say to you?

A. Why, he told me I was running an ad with WEOL, and until—that we could have our choice, either working with them or with the radio station.

Q. Did he give you any reason for the choice?

A. Well, no, he didn't. He just gave me my choice, either one way or the other.

Q. And what did you say to that?

A. Well, he told me to think it over. So I thought it over for about three or four days and, why, I cancelled the WEOL ad.

Q. How did you cancel the ad with WEOL?

A. Well, I called them up and I had signed four, I believe——

Q. Just a moment. You called the telephone number of WEOL?

A. Yes.

Q. Do you know with whom you spoke there?

A. No, I don't. I asked for the credit department, I believe.

[fol. 669] Q. And you told them that you were cancelling the ad?

A. Yes.

Q. And then you continued advertising with the Lorain Journal?

A. The Lorain Journal, yes.

Q. You had a contract with the Journal at the time you started advertising over WEOL?

A. Yes, sir.

Q. Do you know what that contract provided?

A. It was to run for a year with, I think, seven lines a day. I don't really know.

Q. Do you recall what the cancellation provisions were in the contract? Were you to be given thirty days notice?

A. I was supposed to be given thirty days, but I wasn't given that.

Q. Were you given any notice?

A. No notice at all.

Q. What was the first intimation you had that the contract was not in effect?

A. Well, most generally every night I noticed my ad, and for three or four days there I didn't notice it, you see, and then I checked back and found out.

Q. In other words, you picked up the paper and there was no ad?

A. That's right.

Q. That was how you knew you no longer had a contract?

A. Yes.

[fol. 670] Q. You are still with the Lorain Journal, still advertising with them?

A. Yes, sir.

Q. Would you prefer to advertise over both the radio station WEOL and in the Lorain Journal?

Mr. Fulton: I object, if your Honor please.

The Court: Put in that form it is objectionable.

Q. Do you consider that not being able to advertise in the Lorain Journal has a harmful effect on your business?

A. Yes, I do.

Q. I am sorry, I have got that question wrong. Do you consider not being able to advertise over radio station WEOL has a harmul effect on your business?

A. Oh, yes.

Q. Following your conversations with the Journal representatives, and the time you noticed the ads were no longer appearing, did you consider advertising in a Cleveland newspaper?

A. Well, we haven't run any ads in the Cleveland paper for years.

Q. Any reason?

A. No, we never do any advertising with the Cleveland paper.

Q. Do you consider that such advertising would be use-

[fol. 671] ful for your business in Amherst?

A. I don't really understand you on that one. Do you mean—well, we wouldn't get any calls from Cleveland up there, you see.

Q. Would you tell the court about some of the materials and machinery you use in your business and direct your attention to those which you purchase from outside the State of Ohio?

A. Well, we purchase most of our sewer equipment from Chicago.

Q. Chicago, Illinois?

A. Chicago, Illinois.

Q. Does it come directly to you?

A. Yes, it does, or else we have it sent to other places to pick up.

Q. Have you on occasions placed an order from your establishment in Amherst with a firm in Chicago, Illinois, and ordered the material to be sent to another State?

A. Yes.

Q. Would you give details?

A. We had it shipped to Battle Creek, Michigan.

Q. Directly from Chicago?

A. Directly, yes.

Q. And the order was sent from Amherst, Ohio, to Chicago, is that right?

A. It was shipped from Chicago.

[fol. 672] Q. No, no. Your order?

A. It was shipped to Battle Creek.

Q. That's right, but when you made the order for the merchandise you sent the order from your establishment in Amherst to Chicago?

A. Yes, sir.

Q. And then the merchandise was shipped from Chicago to Battle Creek?

A. That's right.

Mr. Altman: No further questions.

Cross-examination of Leonard Oldfield.

By Mr. Fulton:

Q. Your work is all local work?

A. Yes, sir.

Q. So that whatever equipment or tools you used, you used to perform the services that you agreed to do for some person or persons?

A. Yes, sir.

Q. In the locality?

A. Yes, sir.

Mr. Fulton: That is all.

Mr. Altman: One moment.

Redirect examination of Leonard Oldfield.

By Mr. Altman:

Q. Is it not correct that you have another establishment in Michigan?
[fol. 673] A. Yes, sir.
Q. And that you do work in Michigan as well as in Ohio?
A. Yes.

Mr. Altman: That is all.

Recross-examination of Leonard Oldfield.

By Mr. Fulton:

Q. And your work up in Michigan is confined to the locality where your business is?
A. That's right.

Mr. Fulton: That is all.
Mr. Altman: That is all.

(Short recess taken.)

[fol. 674] James Resar, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of James Resar.

By Mr. Altman:

Q. Would you state your *an*me, please?
A. James Resar.
Q. What is your home address?
A. Jaycox Road, Avon Lake.
Q. Ohio?
A. Ohio.
Q. And what is your business?
A. I'm in the machine tool rental, that is, I rent floor sanders, edgers, drills, polishers, and we sell paints and varnishes.
Q. How long have you been in that business?
A. Since the end of the war, about four years.

Q. Where are you- places of business located?
A. One in Avon Lake and the other at 519 Lodi Street, Elyria.
Q. Do you have a contract with the Lorain Journal to advertise?
A. At one time I did, but I don't now. It was cancelled.
Q. What kind of a contract did you have, for classified or display?
A. It was for classified ads.
[fol. 675] Q. Going back to about November, 1948, did you have a contrack with the Lorain Journal?
A. At that time, yes.
Q. Did you ever consider advertising over radio station WEOL?
A. Yes.
Q. And what did you do, if anything, to secure advertising time over WEOL?
A. Well, in, I think it was, November of 1948 I signed a contract with WEOL for some advertising time.
Q. And pursuant to that contract did you begin to advertise over radio station WEOL?
A. That is right.
Q. Subsequent to starting to advertise over radio station WEOL, did you have any conversation with representatives of the Lorain Journal, concerning your advertising over the radio station?
A. You mean after?
Q. After you began to advertise?
A. Yes, sir.
Q. Would you state the time that the first one took place, as best you can remember?
A. It was in February, I believe, of 1949. I am not definitely sure of the exact date.
Q. What happened?
A. I received a call at the store. They said it was the Lorain Journal calling.
[fol. 676] Q. Do you recall who called you?
A. At first it was a clerk, or a girl, on the 'phone.
Q. Do you know her voice?
A. I knew that it was a lady's voice; I didn't know her or I don't know her name.
Q. What did she say?
A. She said she was calling me, that I was either going

to have to change my radio advertising or stop it or stop the radio or stop my contract with the Journal.

Q. In what way did she say you should change your radio advertising?

A. She said if I would quit advertising my Avon Lake business on the radio I could continue my contract with the Journal from my Avon Lake address.

Q. And you could advertise which place of business on the radio?

A. Just my Elyria place, but not my Avon Lake place.

Q. And what did you say to that?

A. I said no, that I had a contract with the Lorain Journal for running advertising.

Q. Was that part of the conversation also with the girl who called you?

A. Yes; and then when I told her I had a contract and I didn't think she could break it, she said she would let me talk to the manager.

Q. Did the manager come on the 'phone right then?

[fol. 677] A. No; a little while later he called me back.

Q. You didn't know the manager before?

A. No, never had met him.

Q. It was a man that called you?

A. It was a man that called me.

Q. Did he identify himself as the manager?

A. He said he was the manager of the Lorain Journal, and what his name was, I really don't recall.

Q. What did the manager say to you?

A. Well, he went on and tried to explain that it was against the policy of the Lorain Journal to run the ads of any merchants that run ads in the Chronicle-Telegram or on the radio, and that he would give me—well, I can't remember word for word any more, but it was just the policy and that I would have to either quit the radio or my contract would become void with the Journal.

Q. Do you recall if he said anything about giving you thirty days notice of cancellation?

A. I had a talk with him over the 'phone about the contract and I stated I had a contract, and that I thought in America we had to live up to them, that is, a contract was supposed to be good. He claimed there was a clause in there that either party could cancel inside of thirty days and he said I would get a written notice in the mail, which

I did get within a couple of days, stating that my contract would be terminated in thirty days.
[fol. 678] Q. You say you received a written notice?
A. Yes, sir.

Mr. Altman: Will you please mark this as our next exhibit?

(Document marked by clerk "Government's Exhibit 158.)

Q. I show you Government's Exhibit 158. Would you tell me whether that is a photostat of a carbon copy of the letter of cancellation sent to you?
A. As far as I can recall, it was similar to that, yes.

Mr. Altman: I offer this Exhibit in evidence, your Honor.
The Court: It may be received.

Q. Subsequent to the receipt of this letter did your advertisements continue to appear in the Lorain Journal?
A. For the period of thirty days, yes.
Q. Did they subsequently bill you for those advertisements?
A. Yes, quite awhile.
Q. What happened? Did you pay the bill immediately?
A. No, I was kind of hot under the collar at the time and I swore that I would never pay the bill, but after being advised by other people that I had a credit standing and that I should look out for it and that maybe some day I would want to advertise with the Journal again, why, they advised me to go ahead and pay the bill.
Q. Would you give the details of how you happened to pay the bill?
[fol. 679] A. Well, I was called on the 'phone a couple of times, I think by a Mr. Meade from the credit department of the Lorain Journal.
Q. Do you recall his name, again?
A. I think it was Mr. Meade. He explained that he would like to have this bill settled, and I told him that if he would send the manager over to my store so I could tell him what I thought, why, I would pay the manager the bill. It wasn't too long after that until I had the privilege of meeting Mr. Self. He come over to my store.
Q. Do you think you would recognize Mr. Self?
A. Yes.

Mr. Altman: Mr. Self, would you stand up?

A. That's him.

Q. Is that Mr. Self?

A. That's right. And we that day had quite a discussion on American principles and contracts and different things. But I paid the bill.

Q. Are you still advertising in the Lorain Journal?

A. No.

Q. Does the fact that you do not advertise in the Lorain Journal place you at a competitive disadvantage?

A. I believe I would like to answer that this way: I have lost some business by not advertising in the Lorain [fol. 680] Journal, yes.

Q. From where did that business come to you previously?

A. I used to do quite a bit of business in what is known as South Lorain and I have lost a couple of hundred dollars of business a month through that particular district since my contract is terminated.

Q. What do you base that figure on of a couple of hundred dollars? Your previous earnings for that area?

A. Previous business from that area.

Q. That is, for each month, your figure?

A. Each month.

Q. Following your cancellation by the Lorain Journal, did you consider advertising in a Cleveland newspaper?

A. No.

Q. Why?

A. I don't in my own mind believe that the Cleveland newspapers are distributed enough in our territories out there to be advantageous to my business.

Q. Do you know whether the rates of the Cleveland papers are higher than the advertising rates of the Lorain Journal?

A. I have never checked into that. I don't know.

Q. Now, could you tell us a little more about the products you sell and the merchandise which you use? What nationally advertised products do you sell which come from out of the State of Ohio directly to your places of [fol. 681] business?

A. Well, I think we get quite a few products from the Minnesota Mining Company, that is, on the sanding paper.

Q. Where is that located?

A. In the State of Minnesota.
Q. Do you believe it is St. Paul or Minneapolis?
A. Minneapolis, I think.
Q. And what other products?
A. Well, I get my shellacs and varnishes and varnish removers from the James B. Day Company of Chicago.
Q. Illinois?
A. Illinois, that's right.
Q. Do you get any sanders or sanding machines from outside the State of Ohio?
A. We have some that we get from the Sterling Manufacturing Company of Chicago, Illinois, and I get some tools from Black & Decker Manufacturing Company. That's out of the state, too.
Q. Do you recall whether or not they are in Baltimore, Maryland?
A. It is in Maryland, I know.

Mr. Altman: No further questions.

Cross-examination of James Resar.

By Mr. Fulton:

Q. As I understand it, you rent certain equipment?
A. That is right.
[fol. 682] Q. And the renting of that equipment, like the sale of your paint and varnish, is a local enterprise?
A. Well, county-wide, yes.
Q. County-wide?
A. Yes.

Mr. Fulton: That is all.

Mr. Altman: Step down, please, Mr. Resar.

[fol. 683] Cornelius A. Hageman, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Cornelius A. Hageman.

By Mr. Altman:

Q. Would you state your name, please?
A. Cornelius A. Hageman.

Q. What is your home address, please?
A. 1036 Oberlin Avenue, Lorain, Ohio.
Q. What is your business?
A. Hageman Supply Company.
Q. How long have you been in that business?
A. Close to 20 years.
Q. Where is the place of business located?
A. It is at 1750 Broadway in Lorain, Ohio.
Q. Did you have an advertising contract with the Lorain Journal?

The Court: What is that business? Would you give us some details of your business: what do you supply?

The Witness: We handle automobile supplies, oil, batteries, garage and service station equipment and accessories.

[fol. 684] Q. Did you have an advertising contract with the Lorain Journal in the fall of 1948?

A. Yes, I did in '48.

Q. When did you begin to advertise over radio station WEOL?

A. Shortly after the station went on the air.

Q. Did you sign a contract with WEOL?

A. I had a joint contract with another merchant. We split a 15-minute program.

Q. Do you recall how long the contract was to run?

A. It was a 52-week contract with an option to drop at the end of 13 weeks.

Q. After you began to advertise over radio station WEOL did you attempt to place advertising in the Lorain Journal?

A. I did at first and then dropped the attempt.

Q. Would you give some details about your attempt? When did you first try to place advertising after you began to broadcast?

A. It was during the life of the contract, and their man told me I couldn't do it.

Q. Would you state who told you?

A. Mr. James Grills.

Q. Mr. Grills had been servicing your advertising previously?

A. Yes.

Q. Then you knew him?

[fol. 685] A. Yes.

Q. Do you recall when Mr. Grills told you you couldn't advertise in the Lorain Journal; can you recall the time?

A. I can't recall the exact date, no.

Q. Can you recall the month or the time of year? Was it shortly after you went on the air?

A. Yes, it was a short time after I went on the air, but I don't remember those dates.

Q. Did Mr. Grills come in to see you in your store?

A. Yes.

Q. What did he say to you?

A. Well, I had a conversation with him previous to coming into the store. In fact I met him next door in the photo shop. I usually was out when he came to my place and he seen me over there.

Q. What did he say to you in the photo shop?

A. He told me I could advertise on either the newspaper or the radio but not in both.

Q. Did he give you any excuse for that?

A. Well, not that I can recall right now, no. He said I had a contract with the Journal and I was violating my contract, or words to that effect, by advertising on the radio.

Q. He said you were violating your contract?

[fol. 686] A. I wouldn't swear to those exact words, because that was quite a while back. It is hard to remember details.

Q. Well, is that the substance of what he said?

A. Yes.

Q. In other words, if I might repeat that once more, the subject of what he stated was that you were violating your contract if you advertised on the air, is that correct?

A. Maybe I mis-worded myself a little on that. He told me I couldn't advertise on both, and he reminded me I had a contract with the Journal, but I wouldn't swear he made the statement that I was violating the contract by advertising on the radio, though.

Q. Did you have any other conversations with Mr. Grills or any other representatives of the Lorain Journal about your advertising over WEOL?

A. No one else but Mr. Grills.

Q. Did you have other conversations with him?

A. Yes, later.

Q. Do you recall when the next one was?
A. After I dropped my contract on the radio station.
Q. You allowed your contract to lapse after the end of 13 weeks?
A. Yes.
Q. Then you spoke with Mr. Grills thereafter?
[fol. 687] A. Yes.
Q. What did he say?
A. He asked me if I was on the air and I asked him what that had to do with it and he told me I couldn't go on advertising in the Journal if I was still on the air. I told him I discontinued my advertising on the radio and he gave me another contract then.
Q. You did get another contract?
A. Yes.
Q. During the period when the Journal said you couldn't advertise in it, did you attempt to place any advertisements in a Cleveland newspaper?
A. No, I didn't.
Q. Would you tell the Court the reasons why you decided against advertising in the Cleveland newspapers?
A. Well, I had never intended advertising in the Cleveland newspapers, perhaps because I had never been approached and the circulation wasn't as large as the Journal and I am a small firm, and in dividing my advertising I wanted to reach as many people as possible with my ads.
Q. Does that mean people in Lorain and vicinity?
A. That's right, because we operate only in Lorain and vicinity.
Q. Would you tell the Court the names of some of the nationally advertised products in which you deal which [fol. 688] come to you from outside of the State of Ohio and come directly to your place of business?
A. The Electric Storage Battery Company, Exide Batteries, and Freedom Valvoline Oil Company, Valvoline Oil, Lyon Metal Products Company, shelving and cabinets and work benches, Aurora, Illinois.
Q. I am sorry, would must repeat this. Where does the Valvoline Oil come from?
A. Freedom, Pennsylvania.
Q. And the Lion Metal Products Company?
A. Aurora, Illinois. And the Atlas Press Company, lathes and drill presses, Kalamazoo, Michigan.

Q. Any others you can think of?

A. There are numerous others. Bishman Products Company. I think that is Oshkosh, Wisconsin.

Q. Do you recall how that name is spelled?

A. B-i-s-h-m-a-n.

Q. Is all or part of the advertising copy that appears in your advertisements in the Lorain Journal prepared by any national advertiser or advertising agency?

A. Yes, at times, occasionally, we secure mats from the companies we deal with.

Q. Would you state the companies from whom you get mats?

A. Well, I haven't had too many but I have had some from the Electric Storage Battery Company in the past. [fol. 689] Q. Do you receive suggestions concerning your advertising from any of these companies which you named?

A. Yes, we do.

Q. Would you state which companies you receive those suggestions from?

A. Well, from practically all the large national advertisers we do business with.

Q. Would you just name a few?

A. Freedom Valvoline Oil Company and Electric Storage Battery Company.

Mr. Altman: No other questions.

Cross-examination of Cornelius A. Hageman.

By Mr. Fulton:

Q. I want to get clarified in my mind the nature of your business, quite briefly. You have a service station, gasoline service station?

A. No, sir, I do not.

Q. You have a store.

A. A store and a warehouse.

Q. Where is your warehouse located?

A. Located on my sister's property.

Q. Is that located in Lorain?

A. Just outside of the city limits.

Q. Within Lorain County?

A. That's right.

[fol. 690] Q. So that these articles of merchandise that

come to you from out of the state either come directly to your place of business or to your warehouse?

A. Yes, sir.

Q. If they come in large enough quantities you put them in the warehouse and keep them there for a time, is that right?

A. Yes.

Q. Then you take them from the warehouse over to your place of business where you sell the merchandise?

A. Not all of it. A lot of it we sell right from the warehouse.

Q. In other words, customers you take to the warehouse from your store, your retail place of business to pick out the particular commodities, is that right?

A. Not entirely, because we never take our customers to the warehouse. The items we sell there we sell out of the catalog. The customers are pretty familiar with them, such as motor oil and batteries. When the dealer contracts to buy those he buys them for a considerable period of time and it is just a question of supplying the merchandise.

Q. In other words, what you do, you go to the warehouse and deliver it to the customer's home or place of business, is that right?

[fol. 691] A. Yes, sir.

Q. Something was said about certain advertising material, like mats on occasion coming to you from the makers of the products.

A. Yes, sir.

Q. Who then would deliver the mats of that kind to the Lorain Journal, if those mats were used in connection with your advertising?

A. They would come to me and I would deliver them to the Journal.

Q. One of Mr. Altman's earlier questions to you implied, if your answer didn't also, that you were told by Mr. Grills that you couldn't advertise your business over the radio station. Now, I assume by that you mean Mr. Grills said to you you couldn't advertise over the radio and at the same time use the facilities of the Lorain Journal: am I right?

A. Yes, sir.

Mr. Fulton: That is all.

By the Court:

Q. Can you state as to the merchandise you sell is it all retail or do you do any wholesale business?

A. Nearly all wholesale.

Q. Nearly all wholesale?

A. Yes.

[fol. 692] Q. Are there any occasions when orders that you receive from your customers are filled directly from the manufacturer, shipped directly from the manufacturer to retailers, or are the orders always filled from your warehouse or store?

A. No, occasionally I have them shipped direct to the buyer.

Q. Are any of those shipped directly to the buyer from out of the state?

A. Yes, sir.

Q. What merchandise is it that is shipped directly from out of the state to the purchasers through you?

A. I have sold storage batteries that way.

Q. Who manufacturers those storage batteries?

A. The Electric Storage Battery Company.

Q. Where are they located?

A. Philadelphia, Pennsylvania.

Q. There are occasions when shipments are made directly from Philadelphia to the customer by your taking orders?

A. Yes, sir.

Q. That is from Pennsylvania to Ohio?

A. Yes, sir.

Q. Are there any others outside of the batteries?

A. Occasionally on equipment we sell.

Q. What type of equipment?

A. Air compressors and automobile lifts and paint booths.

[fol. 693] Q. And those are manufactured where?

A. Well, it all depends. I deal with a number of different companies.

Q. Are any of them manufactured outside of the State of Ohio?

A. Yes, the paint booths we sell are made mostly in Chicago.

Q. Are any of those on occasions shipped directly from

the manufacturer by orders placed through you to the purchasers?

A. Yes, sir.

Q. Now, are there any other products outside of those lifts and the other merchandise you have mentioned, batteries?

A. Those larger items would be in the main the ones that they would ship direct.

The Court: All right, any further questions?

Further cross-examination of Cornelius Hageman.

By Mr. Fulton:

Q. Take for example batteries. You have batteries in your warehouse?

A. That is right.

Q. Do you have any air compressors there?

A. Occasionally.

Q. If somebody came in to buy a battery you didn't have in stock, either in the store, your distributing point, [fol. 694] or the warehouse, then you would order it to be delivered either to yourself or direct to the customer?

A. Not necessarily. I handle a large variety of batteries that don't come under the automotive trade, like during the war I sold 60 large 12-volt batteries to the Coast Guard. And I sell telephone batteries that are special styles, and nearly aways ship those direct from Philadelphia.

Q. In other words, the shipment is direct when you don't have them on hand, is that it?

A. Not always. I have sub-distributors that we ship direct to.

Q. But my point is this, if you have the commodity on hand the person desires——

The Court: He answered the question.

Mr. Fulton: He hasn't answered the question.

The Court: He has answered the question. He says there are some items he sells directly from the store and there are some items he doesn't stock which he sells to customers direct from the manufacturers.

Mr. Fulton: All right.

Mr. Altman: May I ask some more questions?

[fol. 695] The Court: Maybe Mr. Fulton isn't through.
Mr. Fulton: No, I am through.

Redirect examination of Cornelius Hageman.

By Mr. Altman:

Q. Did you just say you had sub-distributors?
A. Yes, sir.
Q. And that orders from these sub-distributors are occasionally filled directly from out of state to the sub-distributors' places of business?
A. That's right. I may have the stock in the warehouse, and I don't want to cut myself short, so I send the order in direct.
Q. One other question. Do you order from outside the State of Ohio on the basis of an order which you have in your hand from a customer?
A. Yes, sir.

Mr. Altman: That's all.

[fol. 696] Ray Jackson, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Ray Jackson.

By Mr. Altman:

Q. Would you state your name?
A. Ray Jackson.
Q. What is your home address?
A. 159 Cleveland Avenue, Amherst, Ohio.
Q. What is your business?
A. I have a shoe store.
Q. How long have you been in that business?
A. One year last Saturday.
Q. Where is your place of business located?
A. 177 Park Avenue, Amherst, Ohio.
Q. Did you advertise in the Lorain Journal?
A. I did.
Q. At what times were you advertising in the Lorain Journal,—when was that?

A. When I started business March 4, 1949 is when I started the business and that is when I started advertising in the Journal.

Q. Were your advertisements in the Journal made pur-
[fol. 697] suant to contract with the Journal?

A. Yes.

Q. Will you give some details about the contract?

A. Well, you signed it for one year and you would get a rate cheaper, the way I understood it. You have to have so many ads, one a week, I think.

Q. Was there a cancellation clause in that contract?

A. Yes, sir.

Q. Do you recall the provisions of it?

A. Well, it says, to my knowledge now, I read this thing but I don't remember whether this is right or not, but it says something about thirty days, that the contract can be cancelled within thirty days.

Q. Did you ever consider advertising over WEOL?

A. Yes.

Q. What if anything did you do to secure advertising time over radio station WEOL?

A. I called the radio station in Elyria and asked them to visit my store, that I wanted to go on the air.

Q. And pursuant to that did someone visit your store?

A. Yes, sir.

Q. Did you make a contract with the radio station?

A. I told them I wanted to go on for thirty days.

Q. You made no contract with the radio station?

A. No, sir.

[fol. 698] Q. What sort of program did you put on over the radio station?

A. I had a spot announcement, four spot announcements a day for thirty days.

Q. Do you recall what time the announcements were to be made?

A. They were at different periods of the day. I think they started at nine o'clock and every hour, just so I had four a day. I think the last one was six o'clock in the evening.

Q. Would it be correct to say the broadcasts were given in connection with the time signals of the station?

A. Yes, sir, that is exactly right.

Q. And subsequent to your going on the air did you have any conversations with anyone known to you to be a representative of the Lorain Journal?

A. Would you repeat that question?

Q. After you went on the air did you have a conversation with a representative of the Lorain Journal about your advertising over radio station WEOL?

A. Yes, sir, I had a fellow by the name of Carl Short.

Q. Carl Short?

A. He called on me every Friday from the Lorain Journal.

Q. And he had been calling on your previously?

A. Yes, sir. And he says, "I heard you are on the radio, WEOL, and we can't take any more ads until you [fol. 699] go off the radio". I said, "Well, I am on for thirty days." He said, "No more ads for thirty days."

Q. Do you recall when he came to see you in relation to when your radio broadcasting began?

A. Well, to my knowledge it would be about six months after I started this store I called the radio station.

Q. And then after you began broadcasting when was this conversation with Mr. Short?

A. The following week. He called on me every Friday, see.

Q. In other words, you had been on the air about a week when you had this conversation with Mr. Short?

A. I think it will figure out to about four days, the way I figure it.

Q. Did Mr. Short say anything about giving you thirty days notice?

A. Not a word about any notice at all.

Q. He merely said during the next thirty days, or rather during the thirty-day period you were being on the radio station WEOL you would not be allowed to have advertisements in the Lorain Journal?

A. That's right.

Q. And did, in fact, the Lorain Journal publish your advertisements during the thirty-day period?

A. No, I didn't have any ads in the thirty-day period.

Q. Let's ask a couple of questions about your practice. [fol. 700] Was it your practice to give them specific ads each week or did the advertisements appear regularly without any special notice to the Journal?

A. No, I just wanted to run an ad in there every week, once a week, maybe a picture of one shoe, or just our name with it, to have it once a week.

Q. And in order to get the advertisement, Mr. Short would call on you, and you would place the advertisement during that week?

A. That's right.

Q. During that thirty-day period did Mr. Short call on you?

A. No, sir.

Q. And no advertisements were placed?

A. No, sir.

Q. Would you state what brands of shoes are carried in your store?

A. I have children's shoes, the Red Goose, men's shoes, John C. Roberts, ladies shoes, Grace Walkers, Freedman-Shelby and Feature Fashions.

Q. Would you state which of those brands of shoes come to you from outside the State of Ohio?

A. All of them come from St. Louis, Missouri.

Q. They all come from St. Louis, Missouri?

A. Yes, sir.

Q. Did they come to you directly from St. Louis, Missouri?

[fol. 701] A. Right.

Q. They don't go through a jobber or distributor?

A. No.

Q. They come direct to you, to your store in Amherst?

A. That's right.

Mr. Altman: No further questions.

Cross-examination of Ray Jackson.

By Mr. Fulton:

Q. Did you, after your talk with Mr. Short, communicate in any fashion with the Lorain Journal?

A. No, sir, I did not.

Q. Did you send any advertisements or tender any ads to them by mail or by phone?

A. No, sir, not during that thirty days.

Mr. Fulton: That is all.

Redirect examination of Ray Jackson.

By Mr. Altman:

Q. Mr. Jackson, what was the regular practice you were following with the Lorain Journal, did you mail advertisements in to them?

A. No, sir. Mr. Short called on me every Friday.

Q. Did you telephone ads in to them previously?

A. No, sir.

Mr. Altman: No further questions.

[fol. 702] The Court: Did Mr. Short call on you on those Fridays during which your ad did not appear in the Journal?

The Witness: No, sir.

The Court: He had been accustomed to call on you every Friday before that?

The Witness: Yes, sir.

The Court: That is all.

[fol. 703] Anna L. Siennicki, called as a witness by the plaintiff and being first duly sworn, was examined and testified as follows:

Direct examination of Anna L. Siennicki.

By Mr. Altman:

Q. Would you state your name, please?
A. Anna L. Siennicki.
Q. Will you spell that?
A. S-i-e-n-n-i-c-k-i.
Q. What is your home address, Mrs. Siennicki?
A. 2021 Hamilton Avenue, Lorain, Ohio.
Q. What business are you in?
A. Oberlin Avenue Carpet Shop.
Q. Are you associated in that business with you- husband?
A. Yes, sir.
Q. Would you give some details about the business, what sort of business it is, what do you do?
A. We sell carpets, draperies, make custom made furniture, re-upholster furniture, and sew a lot of carpet.
Q. How long have you been in that business?

A. It was four years March 1st.
Q. Where is your business located?
A. 1705-07 Oberlin Avenue, Lorain, Ohio.
Q. Have you ever advertised in the Lorain Journal?
A. Yes, sir.
Q. By "you" I mean the Oberlin Avenue Carpet Shop?
[fol. 704] A. Yes, sir.
Q. Do you recall when you began to advertise in the Lorain Journal?
A. I would say in March or April, 1946.
Q. Did you have a contract then?
A. Yes, sir, we did.
Q. And did you continue advertising with the Lorain Journal after the contract expired?
A. Yes, at certain intervals.
Q. What was the approximate period you continued to advertise in the Lorain Journal, do you recall?
A. Oh, I wouldn't know exactly. I would say our contract was from, let's say, May of '46 to '47, and then at intervals we advertised maybe once a month until September 1948.
Q. When did you begin to advertise over radio station WEOL?
A. I think we were on their initial program.
Q. Did you have a contract with WEOL?
A. Yes, sir.
Q. After you began advertising over WEOL did you have any conversations with persons known to you to be officers or employees of the Lorain Journal relating to the desirability of advertising over WEOL?
A. Will you please repeat that question?

(Question read by reporter.)

[fol. 705] A. Yes, sir, I spoke to several men at the Journal regarding advertising in the Journal. Is that what you mean?
Q. That's correct. Would you state in more detail about these conversations; when did the first take place?
A. Well, the first one I really remember took place with George Fuerst, when he came into our store.
Q. About when was that?
A. In December, 1948.
Q. And did you know Mr. Fuerst before?

A. He had been in our store before when we had the contract.

Q. He used to handle your advertising previously?

A. Yes, sir.

Q. Do you know what his position was?

A. Just an advertising salesman.

Q. And what happened?

A. Well, he came in one Saturday afternoon, I remember. He asked me to insert an ad in the Journal.

Q. He asked you to?

A. He asked me to. I said, "We will be glad to." I said, "Are you sure they will accept it?" Of course we kidded about it, of course. At the time there was just rumors the Journal refused the ads, and I said, "Yes, I will be glad to insert an ad." He said, "Well, I will bring in the copy on Monday." Monday came and when I hadn't [fol. 706] heard from Mr. Fuerst I called him on Tuesday.

Q. You knew his voice over the 'phone; could you recognize his voice?

A. Yes, I think I could. He has a slow drawl like. So when I called him on Tuesday he said, "I think you were right." He said, "I can't accept your ads." And that is all there was to that conversation.

Q. He didn't say anything more about why they couldn't accept the ad?

A. He said I was right on Saturday. I said I heard it was against the Journal's policy to accept ads, so he said I was right. So I remember another case very definitely.

Q. This is another conversation?

A. This is another conversation, another time, when the Lorain Chamber of Commerce had their Fall Festival last year.

Q. Will you explain to the court what this Fall Festival is?

A. The Fall Festival is an advertisement promotion trying to bring people into Lorain on a certain Saturday, for instance, to get them to buy in Lorain, and each one of the companies that takes part in the festival gives away a prize, and at the same time the Chamber of Commerce brings in a box to your store where people are allowed to register in the store. The stubs are dropped in that box. Of course, they [fol. 707] have, shall I say, the raffle, on Saturday night, and they choose the names or the stub, I should say, of each

individual's store and the prize is given to the people on Saturday evening.

Q. In other words, you offer a prize, and the people who are able to win that prize are people who have been in your store during the period and have dropped stubs in your box in that time?

A. Yes.

Q. It is primarily a device to get people to come into your store; is that right?

A. That's right.

Q. Do you recall whether other Lorain merchants were engaged in taking part in that promotion?

A. Oh, yes, practically the whole town was.

Q. What happened about the promotion?

A. The Chamber of Commerce had written us a letter asking us to participate, and of course we called them.

Q. You called who?

A. We called the Chamber of Commerce and told them we would be glad to participate but we weren't allowed to get our advertisements in the Journal, in order to notify the public to come in and register at our place. So the Chamber said they would send a representative down to see us and see that our advertising was inserted. So Mr. Bremer came down, Mr. Victor Bremer.

[fol. 708] Q. Did you know Mr. Bremer before?

A. Yes, sir, I did.

Q. You knew Mr. Bremer then?

A. Yes, sir, I worked with him at the Times-Herald years ago. Victor Bremer was with the Journal then, so I knew him quite well.

Q. What did Mr. Bremer say to you and what did you say to him?

A. Mr. Bremer came into the shop and he asked me what we wanted. He said he was sent in by the Chamber of Commerce. I said, "We want to insert an ad in the cooperative ad in the Fall Festival." He asked me if I was still on the radio and I said yes, and he said, "Until such time as you discontinue your radio advertising I can't accept your ad."

Q. Did he give you any reason?

A. He gave me quite a few reasons; of course a lot of them might have been personal, too. He said it was the

Journal's policy not to accept advertising of radio advertisers.

Q. Have you had any other conversations with Journal representatives?

The Court: I think we will suspend at this point.

The bailiff may adjourn court until 2:00 o'clock this afternoon.

Noon recess taken.

[fol. 709] (At 2:00 o'clock, P. M., Wednesday, March 8, 1950 the trial was resumed.)

Further direct examination of Mrs. Anna Siennicki.

By Mr. Altman:

Q. Mrs. Siennicki, when we left off I think you had finished telling us about the Lorain Harvest Festival experience you had, and I think I asked you whether you had any subsequent conversations with representatives of the Journal.

A. I called several times but it wasn't anything direct. I don't know who I talked to, to people in the office.

Q. You had 'phoned the Lorain Journal and asked to place an advertisement?

A. Yes.

Q. Did you ever succeed in having an advertisement placed?

A. No, I didn't.

Q. Will you tell the court what materials are sold by your store which come to you from out of the State of Ohio?

A. Well, we have the James Leed carpet which comes out of Virginia or Pennsylvania. Then we have the Alexander Smith,—quite a bit of it comes out of New York, some out of the Cleveland warehouse. M. J. Whittall carpet which comes from Worcester, Massachusetts, and the Lichman carpet, which comes from Bristol, Pa., and all of our textile fabrics come out of New York or Philadelphia [fol. 710] or Rhode Island.

Q. I don't recall if I asked you this: Following your difficulties with the Lorain Journal did you try to advertise in the Cleveland newspapers?

A. No, sir.

Q. Will you tell the court why you didn't advertise in the Cleveland newspapers?

A. I didn't feel the circulation is large enough to do us any good.

Mr. Altman: No further questions.

Mr. Fulton: No examination.

[fol. 711] Harry H. Kreiser, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination of Harry H. Kreiser.

By Mr. Altman:

Q. Will you state your name, please?
A. Harry H. Kreiser.
Q. What is your home address?
A. 333 West 25th Street, Lorain, Ohio.
Q. What is your business, Mr. Kreiser?
A. I am in the furniture and upholstering business.
Q. That is a retail store?
A. Retail furniture.
Q. How long have you been in that business, Mr. Kreiser?
A. 13 months.
Q. Where is your place of business located?
A. At 3121 Broadway, Lorain, Ohio.
Q. Did you have an advertising contract with the Lorain Journal in September of 1949?
A. Yes, sir.
Q. Did you attempt to secure advertising time on radio station WEOL?
A. Yes, sir.
Q. At what time was that?
A. Sometime in September, I believe.

[fol. 712] Q. Did you enter into a contract with WEOL for advertising time?

A. Yes, sir.

Q. Prior to your going on the air over radio station WEOL did you have any conversations with any persons known to you to be officers or employees of the Lorain

Journal relating to the desirability of advertising over WEOL?

A. Mr. Fuerst, Journal representative that calls on us.

Q. Is he the one that calls on you regularly?

A. Yes, sir.

Q. That calls on you regularly?

A. Yes.

Q. What did Mr. Fuerst say to you and what did you say to him?

A. Well, he kept telling me I couldn't be in the Journal if I was on the air. I was more or less joshing him along for awhile. I didn't really mean it. I was going in on the air and I did. And when I went in on the air, why, they told me that was the end of it, no more Journal.

Q. After your broadcasts began were you able to place advertisements in the Lorain Journal?

A. No, sir.

Q. How long did you advertise over WEOL?

A. Approximately four months.

Q. Did you cancel your contract or did it run out?

[fol. 713] A. It ran out.

Q. Following your conversations with the Journal representative did you advertise your Lorain store in the Cleveland newspapers?

A. No, sir.

Q. Why were the reasons you did not?

A. I didn't feel it would do me personally any good.

Q. After you ceased radio advertising were you approached by representatives of the Lorain Journal for an advertisement?

A. No, sir. They did not want my advertising.

Q. After you had ceased radio advertising.

A. Well, after I ceased, after my contract on the radio ran out, why, in about two or three weeks, about three weeks after that, then the Journal man called to see me. I asked him how he come to come after me; I didn't think they wanted my business. He said, "You are not on the air now, so," he said, "I will talk business to you."

Q. Did you make an effort to get into the Lorain Harvest Festival?

A. Yes, sir.

Q. Would you state to the Court the details of your effort to get into that program?

A. Well, I went to the Journal then and asked for a a chance to get in on the Festival, and the boy at the counter, why, he asked me if I had a contract with the Journal and [fol. 714] I told him they had cancelled it. He wanted to know why, so I told him I was on the air. He said he was sorry he couldn't put me in on the Festival.

Q. Do you recall about when that was?

A. I believe that was in October, wasn't it?

Q. Of what year?

A. In '49.

Q. I am going to show you an exhibit which is marked Government's Exhibit 159 and ask you to tell me what it is. (Handing exhibit to witness).

A. What was it?

Q. What is that that you have in your hand?

A. Well, this is the letter that I had wrote to the Journal after they had personally refused me, and I wrote them this letter and suggested this certain ad here in the paper and sent them a check along to cover the cost of the advertisement, and the same day they received this Mr. Fuerst and his superior——

Q. Do you know the name of this superior?

A. I believe, I am not certain, it was Mr. Self.

Q. Mr. Self, would you mind standing up. Is that the gentleman that you saw?

A. No, sir. But Mr. Fuerst said this was his personal boss and those are the two gentlemen who came down to see me.

Q. Then you don't know the name. That gentleman is [fol. 715] Mr. Self. I take it you don't know the name of the boss?

A. No, I don't.

Q. What was the conversation that was held at that time when they returned the letter?

A. Well, more or less that they was explaining to me why they wouldn't let me in the Fall Harvest Festival.

Q. What did they say to you and what did you say to them?

A. For the simple reason of myself being on the radio, WEOL, they did not want any more business with me as long as I was doing business with the radio station WEOL. They spent approximately an hour's time there explaining it to me.

Q. Do you now have a contract with the Lorain Journal?
A. Yes, sir.
Q. Do you advertise in the Elyria Chronicle-Telegram?
A. No, sir.
Q. Did you at any time?
A. Yes, sir.

Q. Did your advertisement in the Elyria Chronicle-Telegram carry the address of your business in Lorain, Ohio?

A. No, sir, they wouldn't allow me to put my address in. According to the way they said to me, that was their agreement with the Journal, that they can't advertise my business address in Lorain.

Q. That is what they said, they used those words—that [fol. 716] was their agreement with the Journal?

A. That's right. And they wouldn't do it. So I couldn't advertise with the Chronicle.

Q. What method did you use if you couldn't use your Lorain address?

A. Well, I had a phone, telephone in Elyria.

Q. And Elyria Telephone number?
A. Yes.
Q. How did you arrange that?
A. All they do is it said "Call such a number for services".

Q. How did you arrange to have that telephone number?

A. Well, I had these folks, I paid them by the month, and then the ad I had in the telephone directory in Elyria was on that address and their phone number.

Q. So you had to pay somebody in Elyria to let you use their phone to have an Elyria telephone number?

A. Yes, sir, I have been doing that for approximately four years.

Q. I take it since you said you were in business only 13 months you were paying them when you were in another line of activity, too?
A. Yes, sir.
Q. What was that other line of activity?
A. In rug and upholstery cleaning. I expanded my business in January 1949.

[fol. 717] Q. Do you desire to advertise over both radio station WEOL and the Lorain Journal?
A. I would, yes.

Mr. Altman: I offer in evidence Government's Exhibit 159, your Honor.

The Court: What is that?

Mr. Altman: That is the letter and enclosed check.

The Court: It may be received.

Mr. Altman: No further questions.

Cross-examination of Harry H. Kreiser.

By Mr. Fulton:

Q. I just want to get a history of your business. Your present business is what?

A. My main business today is selling new furniture.

Q. Selling new furniture?

A. Yes, sir.

Q. And your place of business is where?

A. At 3121 Broadway, Lorain, Ohio.

Q. And then you have in connection with that business——

A. Upholstering business.

Q. Then do you have an Elyria telephone in connection with that business?

A. I still have that telephone.

Q. You still have that telephone number?

[fol. 718] A. Yes.

Q. Now, at the time of these things you have told us about, that is to say in October, 1949 when Exhibit 159 was written by you to the Journal, were you in the furniture business then?

A. Yes, sir.

Q. And the upholstering business?

A. That's right.

Q. You had been in that business how long?

A. I was in that business from January till October, whenever the Fall Festival was.

Q. From January of what year?

A. 1949.

Q. And before January, '49, what was your business?

A. Rug and upholstery cleaning business.

Q. And where was that located?

A. Well, I had that shop at 333 West 25th, at my home.

Q. Your home is in Lorain?

A. In Lorain, yes.

Q. How long have you been in that business?

A. I have been in that business approximately six years.

Q. You had a telephone over in Elyria in connection with that business?

A. Yes.

Q. And you had had it in connection with that business [fol. 719] for how long?

A. Well, I had it right after I got in business. I was in business for about a year when I took and opened up a telephone in Elyria.

Q. And listed your business in the Elyria telephone directory?

A. That's right.

Q. With a telephone number?

A. Yes, I was in the telephone directory in Elyria because I was pretty well known and they have to call and reverse the charges, call direct to Lorain or they can call at Elyria.

Q. You told about a conversation that you had in your effort to place an ad in the Elyria paper?

A. Yes.

Q. You had your discussion about the use of the Lorain address?

A. That's right.

Q. You told them at that time you had the telephone number in Elyria, did you?

A. At the Chronicle, you mean?

Q. Yes.

A. Yes.

Q. You told them about your telephone number in Elyria?

A. Yes.

[fol. 720] Q. When that conversation came up, did you?

A. Yes. The last advertisement I had in the Chronicle I went down there——

Q. No, my question is when you had that discussion about that ad which you offered and about the Lorain address, you told them over at the Elyria Telegram you had an Elyria telephone number, did you?

A. When I went there to place the ad?

Q. No, I say did you tell them you had the telephone number?

A. They knew that I had it.

Q. Now, with whom did you talk on that occasion?

A. At the Chronicle?

Q. Yes.

A. I am sorry, I do not know. He was a new man there.

Q. You had never seen him there before?
A. That's right.
Q. You had been there before?
A. That's right. I used to do my advertising with Mr. Fox, when he was at the Chronicle, but he isn't there.
Q. And this conversation with this new man took place when?
A. It was in January, last part of January.
Q. Of what year?
A. 1949. I tried to run this ad explaining about my new store, my new business.
[fol. 721] Q. And you had done other advertising in the Elyria paper?
A. That's right.
Q. Before that time?
A. That's right.
Q. And your contacts always were with the man you knew and his name was what?
A. Mr. Fox.
Q. And this man you had this conversation with you never saw before?
A. I did not know him, no, sir.

Mr. Fulton: I think that is all.

Redirect examination of Harry H. Kreiser.

By Mr. Altman:

Q. When you began to advertise in the Elyria Chronicle-Telegram—I am not referring now to this last conversation——
A. I understand.
Q. —but when you began to advertise in the Elyria Chronicle-Telegram were you permitted to use your Lorain address in the advertisement in the Elyria Chronicle?
A. No, sir.
Q. Did they accept the advertisement when you offered it with the Lorain address?
A. They wouldn't put it in.
Q. Was Mr. Fox there at that time?
[fol. 722] A. Yes, sir.
Q. In other words, that was somebody you knew who was there at the time?
A. Yes.

Q. And they refused your advertisement unless it had an Elyria 'phone number, is that correct?
A. That's right.

Mr. Fulton: I object to that question, the way it is put.
The Court: Well, it is leading.
Mr. Fulton: Very leading and by way of summary, both.
Mr. Altman: No further questions.

[fol. 723] Morris Mayer, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Morris Mayer.

By Mr. Rashid:

Q. Would you state your name, please?
A. Morris Mayer.
Q. How do you spell the last name?
A. M-a-y-e-r?
Q. What is your home address?
A. 3026 Cleveland Boulevard.
Q. In which city?
A. Lorain, Ohio.
Q. In what business are you now engaged?
A. Retail hardware.
Q. How long have you been in that business?
A. About 20 years.
Q. Where is your place of business now located?
A. 2922 Vine Avenue, Lorain, Ohio.
Q. Do you presently advertise in the Lorain Journal?
A. Yes.
Q. Calling your attention to the early part of 1949 I will ask you whether or not you had an advertising contract with the Lorain Journal at that time?
[fol. 724] A. Yes, we did.
Q. Did you ever consider advertising over radio station WEOL?
A. Yes.
Q. When did you first consider advertising over that station?
A. When they approached us with regard to advertising.
Q. Do you recall approximately when that was?

A. Well, it was toward the first part of last year.

Q. Did you enter into a contract with Station WEOL for advertising time?

A. No.

Q. Have you ever had any conversation with any persons known to you to be representatives of the Lorain Journal relating to the desirability of advertising over Station WEOL?

A. Yes.

Q. Do you recall with whom you had such a conversation?

A. With their solicitor, Jimmy Grills, who called on us.

Q. When was that conversation held?

A. Well, the first part of last year. I don't recall the exact date.

Q. Do you recall where it took place?

A. In our store.

Q. Was anyone else present at that time?

[fol. 725] A. I guess so. My brother was there and a clerk.

Q. Is Mr. Grills the Journal representative who normally calls upon you?

A. Yes.

Q. Would you please relate to the Court what you said to Mr. Grills and what he said to you in that conversation?

A. I asked him whether, if I were to advertise with the radio station, our contract would be nullified and he said that it would.

Q. Was anything else stated at that time?

A. In what way?

Q. Did Mr. Grills say anything else to you or did you speak to him about anything further?

A. No, not particularly. In what sense do you mean?

Q. Any conversation, anything he said at that time.

A. Well, it was largely around that statement that we couldn't advertise on that radio station and expect to continue to advertise in the Journal under the contract or any other way.

Q. Did you have any conversations with Mr. Grills or with any other Journal representative concerning your advertising on the radio station?

A. Well, after Lodge meeting in Lorain I spoke to Ralph Stillman.

Q. Who is Mr. Stillman.

[fol. 726] A. He is also a solicitor for the Journal.

Q. Where did that conversation take place, if you know?

A. In the Lodge room, that is, at the Temple in Lorain.

Q. Was anyone else present at the time of your conversation?

A. Oh, there were a number of men around. I couldn't tell you who all was there.

Q. Were these other gentlemen in the conversation also?

A. Yes.

Q. Approximately when did this conversation take place?

A. Oh, I would say about a month after I spoke to Jimmy Grills about the previous matter.

Q. Do you recall what you said to Mr. Stillman and what he said to you during this conversation?

A. Well, there was quite a discussion with regard to the situation and I stated that I didn't think it was fair for the paper to do what they did, and we had quite a discussion on that subject. He claimed that the paper was doing it for the protection of the merchants. I argued the point.

Q. Was anything else said?

A. Well, there was quite a lot of things argued during that discussion.

Q. Will you describe it briefly, the best that you can recall, what happened?

A. It's rather hazy in my mind now. I don't know what [fol. 727] else I can tell you. Of course, I was arguing the point that I objected to the setup, not particularly because it would harm me with respect to advertising, but because I felt that it wasn't the proper thing to do, the democratic way of handling things.

Q. What did Mr. Stillman answer to that?

A. Well, he said that—he claimed that the Journal wasn't doing anything out of the ordinary, they were using legal methods.

Q. Did you have any other conversations with any Journal representatives concerning your advertising over the radio station?

A. No.

Q. Following these conversations with Mr. Grills and Mr. Stillman, did you ever attempt to secure advertising time over radio station WEOL?

A. No.

Q. Would you explain your reason for not securing such advertising time?

A. Well, we felt if it were a choice between the two that

the Journal would do us more good as far as our neighborhood store was concerned.

Q. Mr. Mayer, have you ever advertised your Lorain hardware store in a Cleveland newspaper?

A. No, sir.

[fol. 728] Q. Would you explain to the Court your reasons for deciding against such advertising?

A. Well, again because we were a neighborhood store and because we were in Lorain, we didn't feel that out of town newspapers would do us any good.

Q. Mr. Mayer, do you handle in your Lorain hardware store any nationally advertised products?

A. Yes.

Q. Would you name some of them, please?

A. Philco, all the way down the line, television, ranges, radios, and some Westinghouse products, Cochran paints.

Q. Are any of these products shipped to you directly from the manufacturing plant to your place of business in Lorain, Ohio.

A. The paint is, yes. Not the others.

Q. Is Philco shipped to you direct?

A. No, it is shipped from the distributor.

Q. Do you advertise these products, these nationally advertised products in the Lorain Journal?

A. Yes.

Q. Is any part of the cost of that advertising borne by the national manufacturer?

A. Yes.

Q. Would you explain what percentage of the cost is paid by the national manufacturer and in which cases?

[fol. 729] A. In the case of Philco it is half. In the others we often make some arrangements whereby they will stand half the cost, but that is not a permanent arrangement.

Q. With Philco it is a permanent arrangement?

A. Yes.

Q. Mr. Mayer, are there any shipments of these products made directly from a manufacturer to a consumer in Ohio pursuant to an order that you submitted to that manufacturer?

A. I wouldn't say—no I would say no.

Q. Mr. Mayer, you stated that the paint that you sell in your store does come from outside the state and is shipped directly from the manufacturer to you?

A. No, the paint is in Cleveland. The factory is here.

Q. Are any of these products that you sell shipped from outside the State of Ohio to you in Lorain?

A. Yes, some of them are, or were.

Q. Would you mention some?

A. We have some power tools, or had, that had been shipped out of Connecticut, but they are now being shipped out of Cleveland.

Q. Any others?

A. No, not very many others. There are small items, of course, that we buy from various places, but not on a large scale.

[fol. 730] Mr. Rashid: That is all.

Mr. Fulton: That is all.

[fol. 731] Sol Dinn, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Sol Dinn.

By Mr. Rashid:

Q. Would you state your name, please?

A. Sol Dinn.

Q. What is your home address?

A. 1049 Ninth Street.

Q. In which city?

A. Lorain, Ohio.

Q. In what business are you engaged, Mr. Dinn?

A. Department store.

Q. What do you mean by department store?

A. Well, we carry a variety of groceries, meats, hardware, clothing.

Q. How long have you been engaged in that particular business?

A. Well, I have been in business in Lorain since 1928.

Q. Where is your business now located?

A. 3110-3114 Broadway, Lorain.

Q. Do you now advertise in the Lorain Journal?

A. No, I don't.

Q. Do you advertise over radio station WEOL?

[fol. 732] A. I do.

Q. Have you ever advertised in the Lorain Journal?

A. I have.

Q. Calling your attention to the latter part of 1948, I will ask you whether or not you had an advertising contract with the Lorain Journal at that time?

A. I had two of them.

Q. What do you mean by two?

A. Well, I had another interest in another store, which I had another contract with them for.

Q. What is the name of that store?

A. Brownell Food Market.

Q. Where is that located?

A. 1302 Ninth Street.

Q. In what city?

A. Lorain, Ohio.

Q. When did you first consider advertising over radio station WEOL?

A. Well, the early part of 1948 when they first placed the posters in the store announcing they are coming in with a radio station.

Q. Did you ever enter into a contract for advertising time with radio station WEOL?

A. I have.

Q. Approximately when did you enter into such a contract?

[fol. 733] A. Oh, I think around the fall of 1948. I don't recall the date.

Q. After you began to advertise over radio station WEOL, I will ask you whether or not you received a letter of cancellation from the Lorain Journal of your advertising contract?

A. I can recall I received a letter in regard I had thirty days time to make my mind up to stay with the radio or continue with the newspaper.

Q. I hand you Government's Exhibit 160 for identification and ask you to tell me whether that is the letter you received from the Lorain Journal?

A. Yes, I remember that letter.

Mr. Rashid: If your Honor please, I offer Government's Exhibit 160 in evidence.

The Court: It may be received.

Q. Mr. Dinn, have you ever had any conversation with persons known by you to be representatives of the Lorain Journal about your advertising over radio station WEOL?

A. I have just with the man that used to pick up the ads in my stores.

Q. Do you know the name of that man?

A. I don't know the man's name.

Q. Is he the gentleman that normally solicited your advertisements?

[fol. 734] A. He solicited my advertisements for the Journal.

Q. Would you recognize the gentleman if you saw him again?

A. I would, yes.

Q. When did this conversation take place, if you recall?

A. Oh, on the days when he used to come and pick up the ads.

Q. Do you recall when was the first time you had such a conversation with him?

A. Oh, I didn't have the first time—I mean he was coming in maybe a couple of weeks after that, but whether I have conversations with him and I was told about——

Q. My question is when was the first time you had a conversation?

A. I would say maybe a couple of weeks after I received this letter.

Q. Where did the conversation take place?

A. In the store on Broadway.

Q. Was anyone else present at the time besides you and this gentleman?

A. Why, some of my help.

Q. And would you please tell the Court what you said to this Journal representative and what he said to you at that time?

A. Well, we talked in regard to—he asked me if I would cancel the radio station and continue with the newspaper [fol. 735] and I told him that I might if he gives me time enough to see which I will get the best results. If I get best results from the radio I will stay with the radio and if I get the best results with the newspaper I will continue the newspaper.

Q. What did he say to that?

A. So he gave me a few weeks time to make my mind up, and I stalled him off until the first of the year.

Q. Did you have another conversation with this gentleman the first of the year?

A. Oh, yes, we had one every time I met him in regard to that.

Q. Will you tell us about the conversation you had the first of the year? Was that 1949?

A. Well, I had a conversation with him before the first of the year. I told him that——

Q. When did that conversation take place?

A. Oh, I would say just about a week before the first of the year.

Q. Where did the conversation take place?

A. In the store.

Q. Was anyone else present?

A. Yes.

Q. Who else was present?

A. Well, I don't know, my manager or the girl. I couldn't offhand say, but we all were in on the whole deal.

[fol. 736] Q. Were they within hearing of the conversation?

A. Oh, yes.

Q. Would you please tell the Court what was said to you and what was said by you to the Journal representative in that conversation?

A. Well, I told him I made up my mind to stay with the radio, I thought I had better results from the radio than I had from the newspaper at that time, and I told him that in the near future if I decided I wanted to quit the radio I will come back to the Journal.

Q. Was anything else said?

A. No.

Q. Did he say anything in answer to that?

A. No.

Q. Did you have any other conversations with this Journal representative about your advertising on the radio station?

A. Oh, I had during the year 1949, I had many contacts with him and he asked me if I——

Q. Do you recall any particular contacts?

A. Oh, I met him in different places, in restaurants, or down on Broadway, and we discussed it.

Q. Do you recall any particular place where you had an actual conversation with him that you can now remember?

A. Well, I don't know, I seen him so many times I don't just remember, but he came up to the store a couple of times [fol. 737] and asked me if I was——

Q. When was this?

A. Oh, just about three or four weeks ago.

Q. And is that the same gentleman that called on you before?

A. Same gentleman, that's right.

Q. Was anyone else present within hearing of that conversation?

A. Oh, yes.

Q. Would you tell the Court what was said at that time?

A. I told him some day I will come back to the Journal. I didn't give him a definite time.

Q. Mr. Dinn, following these conversations with this Journal representative, did you discontinue your advertising over radio station WEOL?

A. No.

Q. Did you continue your advertising in the Lorain Journal?

A. No.

Q. You mentioned a few mniutes ago that you also advertised your Brownell store in the Lorain Journal?

A. Yes.

Q. After you received the letter of cancellation marked Government's Exhibit 160, were you able to advertise your Brownell store in the Lorain Journal?

A. No, after receiving that letter I got both contracts that I have signed during the month of July 1948 cancelled, and [fol. 738] I asked him in regard to the Brownell Store.

Q. Who did you ask?

A. The man that picked up the ads.

Q. When did you ask him?

A. I would say maybe in December or November, December, 1948. I don't recall the date.

Q. Where did that take place?

A. In the store at 3110 Broadway.

Q. What did you ask him?

A. Why they cancelled the Brownell Avenue store, and I says I have a partner in there and the store don't go under Dinn's name, why they cancelled that contract with me,

and he said the reason they cancelled that contract with me was because I signed the contract with the Journal and had my name on it, and he said at any time I want to change that contract and have my partner sign the contract, why, they will continue advertising.

Q. Mr. Dinn, do you wish to advertise both over radio station WEOL and in the Lorain Journal?

A. I would.

Q. Would you please state your reasons for this?

A. Well, I had it for about three or four months in 1948 until I cancelled that at the end of 1948, I had good results from it because I think the newspaper advertisment is good. I advertised in the newspaper a good many years. I have [fol. 739] nothing against it. I think we can benefit by having both ads, the radio and the paper.

Q. Mr. Dinn, do you handle in your store, or both your stores, any nationally advertised products?

A. We do.

Q. Would you name a few of those?

A. Well, we buy a lot in the groceries, canned stuff, that is canned and manufactured in different states in this country, and then we buy our fresh meat from out of the state.

Q. Would you tell the court where you buy these different products from?

A. Well, we buy meat from Chicago, Kansas City, and from Hormel's, Sioux Falls—I don't recall exactly where we get them all from. But our canned stuff we get from —peaches are canned in California, pineapple in the Hawaiian Islands, salmon in Alaska, and all over the country.

Q. Are these products that you are mentioning now shipped to you directly from a manufacturing plant outside of Ohio to your store in Lorain?

A. Some do. We get coffee roasted outside of the state, we get shipments from out of the state.

Q. Where does that come from?

A. Well, I think Hills comes from Chicago. We get Beech Nut from New Jersey, we get Heinz from Pittsburgh, [fol. 740] Pennsylvania, and we get direct shipments from big concerns like Delmonte from California.

Q. Do you advertise these products you have just mentioned in your advertisements in the Lorain Journal?

A. We did.

Q. And did you advertise these products over radio station WEOL?

A. We do now, yes.

Q. Do you receive from any of these manufacturers you have just mentioned any advertising copy, suggestions, or advertising mats for your advertisements?

A. We do. We don't use mats now, but we did when we had advertisements in the paper.

Q. But those come directly from the manufacturing plant to your place of business?

A. The mats?

Q, The mats.

A. All mats come from the general office of the manufacturer.

Mr. Rashid: That is all.

Cross-examination of Sol Dinn.

By Mr. Fulton:

Q. How many letters did you get from the Lorain Journal?

A. If I can recall, there was two.

Q. Two letters?

A. Yes, sir.

[fol. 741] Q. That is, you got one other letter besides this letter marked Exhibit 160?

A. Yes, I got my cancelled contracts with another letter, yes.

Q. This one is marked Exhibit 160?

A. Yes.

Q. And then you say you got another letter that returned the cancelled contracts?

A. Yes, sir.

Q. Did you look for that letter?

A. I don't remember if I looked for it or not. I didn't think it was very important, and then I had my mind made up that I was going to stay with the radio, so if I didn't turn it in I think I could still find it if I looked for it.

Q. And it returned to you the contract itself?

A. That's right.

Q. Now, Mr. Self, back here——

The Court: Is that another and different contract than the one that is referred to in that letter?

Mr. Fulton: I will have to ask the witness that.

Q. This letter Exhibit 160, a very short letter dated November 10, reads as follows: "Dear Mr. Dinn: you [fol. 742] are hereby notified that your advertising contract dated July 1, 1948, is cancelled thirty days from this date." Now I will ask you whether with that letter you received the returned contract?

A. I don't remember now with which letter I received the cancelled contracts. I couldn't remember offhand.

Q. But you are sure you got another letter?

A. I am positive that we did get another letter in regard to that because I didn't cancel my radio—or my newspaper advertising, which is the Journal, right away, you see. In other words, I asked them—I asked the man that picked up my ads to give me a little longer time to make my mind up if I wanted to stay with the Journal or advertise on the radio.

Q. Did that other letter return the contracts?

A. I don't recall whether this is the one returning the contract or the other letter was. The fact that my time was expired for advertising in the Journal——

Q. That is, your contract then had expired? You mean by that that the contract had reached the end of its term?

A. The end of its term.

Q. You got the return of that contract?

A. Of that contract.

Q. That followed this letter, did it?

A. Yes, sir.

Q. The man you talked to was Mr. Self, is that right? [fol. 743] Did you ever talk to him (indicating Mr. Self)?

A. No, it was another fellow, a young fellow.

Q. This Brownell store was discussed with somebody, wasn't it?

A. With the same man.

Q. And when you mentioned to him—by the way, what was his name?

A. I don't remember his name. I saw him hundreds of times but I never asked him what his name is.

Q. Were you ever contacted by more than one man for that newspaper?

A. Direct from the paper?

Q. Yes.

A. No, but I have been contacted by private business men individually in the city.

Q. No, Mr. Dinn, I want to get, if I can, this particular person. You don't know him by name?

A. No.

Q. You had a conversation with some man from the Journal about this Brownell store?

A. That's right.

Q. Is that the man who always contacted you at your store?

A. That's right.

Q. The same man all the time?

A. The same man all the time.

Q. He is the man you asked, "Why do you include the [fol. 744] Brownell store?"

A. That's right.

Q. Didn't he tell you it was because of the poor credit of that store?

A. No.

Q. Did he say anything about credit?

A. No, credit was never mentioned of that store.

Q. Let me put this question to you: Did anybody from the Lorain Journal, anybody, whether it was this man you are now talking about or not, ever say to you that the Brownell store couldn't continue because of its poor credit?

A. No, never.

Q. That you couldn't continue along?

A. Never.

Q. Do you have just one contract for both stores?

A. No, two separate contracts.

Q. Two separate contracts?

A. Two separate contracts.

Q. Now, then, will you make a search for this other letter that you talked about?

A. I wouldn't promise I will be able to find it.

Q. No, I am not asking you to promise to find it. I am merely asking you to see if you can find it.

A. I could.

Q. Will you? You will make a search for it, will you?

A. I'll try.

[fol. 745] Q. And if you find it will you bring it in here or send it in?

A. I'll be more than glad to do it.

Q. Or let some of the gentlemen over here, Mr. Kramer or some of his assistants or associates know whether you have been able to find it. Will you?

A. I sure will.

Mr. Fulton: That is all.

Mr. Kramer: We call upon the Lorain Journal Company to make a search for the letter and to produce it if they find a copy in the files, if the court please.

The Court: Do you have a copy of it, Mr. Fulton?

Mr. Fulton: Of these letters?

The Court: The one you are asking this witness to find?

Mr. Fulton: No, we don't know of any such letter. That was the purpose of my inquiry.

The Court: Well, government counsel have just made a demand on you to find it. The answer is that you don't have it?

Mr. Kramer: Oh, I see.

Mr. Fulton: This witness has talked about a second letter. We know of no such letter that was addressed to him.

[fol. 746] Mr. Kramer: I didn't understand that.

Mr. Fulton: We don't have a copy of such a letter.

Mr. Kramer: That's all, Mr. Dinn.

[fol. 747] George Fitch Llewellyn, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of George Fitch Llewellyn.

By Mr. Kramer:

Q. Will you state your name, please?
A. George Fitch Llewellyn.
Q. What is your address?
A. 311 Georgia. Avenue, Lorain.
Q. What is your business?
A. Auto dealer.
Q. I can't hear you.
A. Auto dealer.
Q. How long have you been in that business?
A. 31 years.
Q. Always in Lorain, Ohio?
A. Yes, sir.

Q. Where is your place of business located?
A. 108 East 19th Street.
Q. Do you advertise in the Lorain Journal?
A. Yes, sir.
Q. Have you ever advertised on WEOL?
A. No, sir.
Q. Calling your attention to the month of October, 1948, did you have an advertising contract at that time with the Lorain Journal?
A. Yes, sir.
Q. Did you ever consider advertising over WEOL?
[fol. 748] A. Yes, sir.
Q. Did you ever enter into a contract with WEOL for advertising time?
A. No, sir.
Q. Tell the court the reason why you did not enter into such a contract.
A. Well, I was told that——
Q. By whom?
A. By Frank Maloy and Vic Bremer of the Lorain Journal, that if we wanted to try radio advertising that we should eliminate our newspaper advertising so that any benefits from the radio advertising would be felt separately rather than with the aid of any newspaper advertising assistance.
Q. Confronted with the choice between the two, you stuck with the newspaper, is that it?
A. That's right, sir.
Q. Now, you spoke of speaking with Mr. Maloy, a defendant in this case. Where was the first conversation on this subject; where was the first conversation on this subject held?
A. With Mr. Frank Maloy?
Q. Yes, with Mr. Maloy.
A. In the office of the Journal, in the general room there.
Q. And about what time was it held?
[fol. 749] A. Oh, I would say in the late afternoon.
Q. What month?
A. October, 1948, I believe it was, somewhere.
Q. You went to Mr. Maloy's office, did you?
A. Yes, sir.
Q. Was it pursuant to appointment, or did you drop in?
A. No, I just went there.

Q. Was there anyone else within hearing distance when you had this conversation?

A. I don't remember of anyone.

Q. You went in, so I take it you opened the conversation; is that it?

A. That's right.

Q. What did you say to Mr. Maloy and what did he say to you, in as much detail as you can remember?

A. Well, I want to digress a minute to say that Frank Maloy——

Q. You can't digress, you have to answer questions.

A. All right. I said to Frank Maloy——

Q. Is he a friend of yours?

A. A very good friend of mine. I hope Frank is one of my best friends. I said, "I have come in to see you about your policy about restricting or rescinding our advertising in the Journal or not accepting it if we do go on the air", and I said, "I have understood that some of the other dealers in town and some of the merchants have had their advertising rejected here if they did advertise on station [fol. 750] WEOL in Elyria." That's the only one I was interested in, and we had planned—well, that was not in the conversation——

Q. Don't tell us if it wasn't in the conversation.

A. I said, "Is this true?" and he said, "Yes, we believe it's our right to reject or accept any advertising, and this is our policy." And I said, "Well, Frank, gee whiz, you mean you wouldn't accept my advertising if I went on the air?" "That's right." "Well," I said, "Heck, I have got a right to spend my money for advertising the way I please." And he said, "Well, it's our policy and I resent your intrusion into this policy in the operation of our business."

Q. Did you offer any explanation as to why you were intruding, as he put it?

A. Well, I actually was there as—I was personally president of the Lorain County Auto Dealers Association, and I wanted to get the full story so we could present it at a meeting of the auto dealers, which did subsequently follow. But to get back to this conversation, the next thing that developed was that he became angry over my questioning him and he told me, "You keep your nose out of it until such time as you are directly affected with it." And I said, "Hell, that's what Hitler and Stalin did," and I said,

"I don't think that's a proper policy, Frank, and for my money your policy stinks." And there wasn't anything [fol. 751] more to it, that just about ended the conversation at that particular time.

Q. Did you shake hands as you left?

A. Oh, I don't know. I don't think we embraced each other. I was pretty well burned up about that time, and I think Frank was.

Q. Now, I will call your attention to the month of February in the year 1949 and I will ask you whether or not at that time you had any conversation with Mr. Victor Bremer of the Lorain Journal?

A. Yes, we had received a——

Q. Where was the conversation held?

A. The conversation was over the telephone, I would say.

Q. Did you call him or did he call you?

A. Well, I called him because we had received from the manufacturer I represent from the advertising department a notice that we could procure a disk suitable for playing on a radio transcription announcing the new 1950 Pontiac, so—I mean 1949 Pontiac, don't I? So it was my idea to get the five dealers in my county to participate in the cost directly in proportion to their contracts and that we would have quite a little ballyhoo over the year, and whether Vic told me at the moment or whether he got the answer and came back, isn't quite clear in my mind, but the result of that conversation was that if we wished to use the broad- [fol. 752] cast on WEOL as long as it didn't have our signature connected with it, it would be O. K., we would still not be refused our advertising, or they would still accept it.

The Court: I don't quite get that answer, the last part.

The Witness: As long as we didn't have our name, Llewellyn Motor Company, connected with the national publicity on this platter, they would play it, broadcast the program all right, but they couldn't say, "See your dealer in Lorain."

The Court: Who would play?

The Witness: Station WEOL would use this disk, this record, you see, already prepared by the Pontiac Motor Division Advertising Department, they could use that as long as it was sort of a national program.

The Court: Who said that?

The Witness: Vic Bremer. He said it would be all right

to use it and play that disk, but that we couldn't have our signature or our name in on this as coming from Lorain. So that sort of defeated the purpose of the platter and I didn't go on with any further negotiations with the radio station. I did talk to Jack O'Brien——

Q. I don't want to know about any conversations you [fol. 753] had with the radio station, because they are not admissible. After your talk with Mr. Vic Bremer, did you have any other conversations on this same general subject with Mr. Frank Maloy, a defendant in this case?

A. Oh, I have talked to Frank Maloy lots of times about the situation.

Q. Well, do you remember any particular conversation, the substance of which, or the general nature of which, you can describe to the court?

A. Well, I had another instance where Notre Dame was broadcasting—I mean Pontiac was sponsoring a Notre Dame broadcast and I wanted to get in on that, but the cost of the broadcast and the assumption that I wouldn't be able to place any advertising in the paper as a result of it discouraged the operation.

Q. My question, sir, was whether you had any other conversation that you can now remember with Mr. Frank Maloy about this general subject?

A. No, I think that just about completes the conversation.

Q. Was this a subject upon which you and Mr. Maloy had several conversations?

A. Oh, frequently. As a matter of fact, an appointment was made for Mr. Self to come up to the place and see me.

Q. Did he ever do so?

A. Well, yes, he was there alone, if I remember correctly, but I was too busy, tied up at that particular time, [fol. 754] and to my knowledge I don't believe I ever went to Mr. Self with the problem after that time. Two or three times we tried to get together and couldn't make it, and I have never done anything more about it. Oh, I'll say one more thing about that conversation, if I may.

Q. With whom?

A. With Frank Maloy.

Q. Go ahead.

A. In the course of the conversation either then or at—no, it was the same day, the opening day, I said, "Well, Frank, do you mean to tell me that any other type of ad-

vertising medium, like direct mail," I said, "do you mean if I do a lot of direct mail you would refuse to accept my advertisement in the paper?", and he said, "We might. We haven't got around to that yet." So the result is we have gone on to $4,000 expenditure for direct mail this year.

Q. Oh, you have?

A. Yes, and it's pretty expensive, I'll tell you, although I will say that I think our allotment with the Journal is probably more this year than last by double.

Q. You think you are spending twice as much with the Journal this year as you did last year?

A. Yes, we have eighteen employees now and we used to have only five, so we have grown quite a bit.

[fol. 755] Q. You consider newspaper advertising pretty effective?

A. I consider the circulation of the Journal as my best medium in my community, yes, sir, for total representation. There is other types of advertising that probably are more effective in their particular types, but——

Q. But you are quite satisfied with the results you are getting from the Lorain Journal, is that it?

A. I'm well satisfied, yes, sir. I think it is a very good newspaper with the exception of some policies. That's my belief.

Q. I might say to you, Mr. Llewellyn, there is no occasion either to agree or disagree with your opinion on the part of the government. The parties in this case have stipulated that the General Motors Corporation has a contract to advertise in the Lorain Journal. Do you sell products made by the General Motors Corporation?

A. Yes, sir, Pontiac Motor Division.

Q. Where do you get your Pontiac automobiles from?

A. They all come out of the Pontiac factory in Pontiac, Michigan. They have seven or eight factories, but mine all comes from this one factory.

Q. Yours come from the one factory, and they are brought to you by truck, rail, or what?

A. By truck, by boat, and being driven, the three ways.

[fol. 756] Q. Do you ever place an order or orders for a Pontiac automobile or automobiles based upon a specific order or orders that you have received from a customer of yours in Lorain?

A. That's about the only way we do it.

Q. Is all or any part of the cost of your advertising in the Lorain Journal borne by the General Motors Corporation?

A. Well, they charge us $15 a car, and that is accumulated, and then for each year we elect how much we want expended for each medium, each proportion, for newspaper, movie trailers, radio, direct mail, roadside signs——

Q. Mr. Llewellyn, I would like you to listen to my question and answer yes or no, if you can. Is any part of the cost of your advertising in the Lorain Journal borne by the General Motors Corporation?

A. Yes, sir, fifty percent of it.

Q. Is all or any part of the advertising copy that appears in your advertisements in the Lorain Journal prepared or passed on by the General Motors Corporation?

A. All of it, all display.

Q. Display advertising?

A. And some classified. Display, I guess you call it.

Q. Does the advertising agency for General Motors send advertising copy from Michigan to the Lorain Journal, or do they send it to you?

[fol. 757] A. Send it to the Lorain Journal and the release comes to us. We never see the mats.

Mr. Kramer: No further questions.

Cross-examination of George Fitch Llewellyn.

By Mr. Fulton:

Q. I assume, Mr. Llewellyn, from your answers to previous questions, in fact your volunteered answers, that you are still doing business with the Lorain Journal?

A. Do you want me to answer that or are you just assuming?

Q. You are, aren't you?

A. Well, sir, our contract runs out this week and we haven't renewed it, but I believe the advertising is being accepted on a temporary basis.

Q. But you have until now?

A. Which has happened before.

Q. Now, I also take it that Frank Maloy and you——

A. Are the best of friends.

Q. —are the best of friends, still are?

A. Sure.

Q. Despite the differences you had on that particular occasion when you discussed, I will call it, your respective rights and obligations?

A. I respect Frank as an editor and a gentleman very much.

Q. Now then, let me put this question, and listen, won't you, please. You are still friends despite the fact that on that occasion and other occasions in discussing that sub-
[fol. 758] ject matter you discussed with each other your relative positions about your respective rights and obligations?

A. Sure we have discussed it.

Q. You told in somewhat detail about this first conversation with Mr. Maloy at his office. Am I right that preceding that the plan was that Mr. Self should call to see you?

A. Following that, as a result of that conversation.

Q. Where was Mr. Self to see you?

A. Self came——

Q. Where was it planned that he should see you?

A. In my office.

Q. The office of what?

A. My garage.

Q. Where you conduct your own business?

A. That's right, sir.

Q. On this day that you saw Mr. Maloy, Frank, as you call him, you came in there to talk to him as man to man, didn't you?

A. Yes, sir.

Q. You didn't represent to him you were there on behalf of this automobile dealers association, did you?

A. No, sir, I——

Q. That answers my question.

A. Yes, sir.

[fol. 759] Q. You told him that you thought you had a right to spend your money for advertising wherever you pleased?

A. Right.

Q. And in turn he told you in substance and effect, regardless of whether he was right or wrong, that he and his paper had a right to take the ad or not, as it pleased, isn't that about it?

A. That's right.

Q. And that's about where both of you and each of you

stood in the beginning, in the middle, and at the end of your conversation, isn't that right?

A. And I still don't agree with him.

Q. And he doesn't with you?

A. I'm not so sure.

Q. How long have you been President of the Automobile Dealers Association?

Mr. Kramer: I object, your Honor. I don't see the relevance of that question whatsoever.

The Court: Well, he answered a question that he went up there because he was President of the Association. He may answer.

A. I was President in the year 1948.

Q. How long have you been a member?

A. Oh, ever since it has been formed, I guess.

Q. Do you know about the Automobile Dealers Association sending a letter to the Lorain Journal commending it [fol. 760] on its advertising policy?

The Court: Now you are going too far afield.

Mr. Fulton: That's all.

Mr. Kramer: If the court please, I call upon counsel for the Lorain Journal to produce any letter they have relating to this subject, with relation to the Automobile Dealers Association.

The Court: Do you have such a letter?

Mr. Fulton: I understand there is such a letter.

Mr. Kramer: We would like to see it. We think we asked for it, if the court please, at a prior proceeding.

Mr. Fulton: That's all.

Mr. Kramer: That's all, Mr. Llewellyn.

The Court: Just a second. Let's not rush this thing. Let's get these things decided. You are calling on counsel for defendants to produce a copy of the letter and counsel asked whether such a letter hadn't been written. Now, it must have been predicated on something or other. If you have such a letter it should be produced. If you don't have such a letter, the court should be advised that you don't have such a letter.

[fol. 761] Mr. Fulton: And I assure your Honor, if there isn't such a letter I will apologize for predicating my question upon its existence.

The Court: I know you will. We will take a 15 minute recess at this time while you look for it.

(Recess taken.)

[fol. 762] Mr. Fulton: I am sorry, if the court please. I found a letter. I don't know whether it is the letter or not, but to see where it fitted I wanted to discover that and I found we had switched reporters. I am sending for Mr. Jarvela, but meanwhile they are at liberty to see the letter. It is very doubtful that it will be used at this time.

Mr. Kramer: I would like Mr. Llewellyn to resume the stand, if the court please.

Mr. Fulton: Would you read my last question?

(Last previous question read by reporter: "Do you know about the Automobile Dealers Association sending a letter to the Lorain Jurnal commending them on its advertising policy?")

Further redirect examination of George Fitch Llewellyn.

By Mr. Kramer:

Q. Now, you remember you discussed your testimony with me before you went on the stand, in my office this noon, do you remember that?

A. Yes.

Q. Do you remember you started to tell me about an incident of a blow-up, as you put it, and I said, "A bankrupt automobile dealer?" and do you remember, in typical fashion, I interrupted you and said I wanted you to answer the question I asked you and not go into that. Do you re-[fol. 763] member that?

A. Yes, sir.

Q. Now, I show you this letter and ask you if that is the gentleman who blew up and whose name you couldn't remember at noon? Is Singleton the man to whom you were referring?

A. Yes, that was the man in question.

Q. Suppose you relate as briefly as you can but tell the whole story, what the Singleton incident was about.

Mr. Fulton: Of course, I object to that. I don't believe it is at all material here. I just said that letter isn't a predicate for the question I propounded.

Mr. Kramer: I withdraw the question.

The Court: If the question you put still stands, I think he has a right to go into it. Now, does it still stand?

Mr. Fulton: It does not, and I withdraw it because it was predicated on the existence of a letter, and this letter is not a basis or predicate of the question which I put.

The Court: Then there is no such letter exists?

Mr. Fulton: As far as I know.

The Court: Well, let's find out, Mr. Fulton. Your client certainly ought to be able to tell you, when you say "as far [fol. 764] as you know." You have asked the question.

Mr. Fulton: That letter would indicate, if your Honor please, that there has been some other correspondence on the subject, if the court please, other than the Singleton matter. The letter contains three paragraphs. When I read the letter I have to take it alone. I don't know what the context is without having the whole correspondence. It would appear the question arose, perhaps now, I say the question arose other than because of the troubles in which Singleton was. It would so appear by one interpretation of the letter. The first paragraph relating to a previous request and investigation and reading between the lines.

The Court: I appreciate that. All I am interested in is the one you put, whether it is true or not that the Association had written a letter to the Journal commending it for its advertising policy.

Mr. Fulton: Well, let me put a series of questions to this witness right now. I will come back to that. I want to see what the connection is between the two paragraphs.

Recross-examination.

By Mr. Fulton:

Q. Mr. Llewellyn, had your Association at any time ever [fol. 765] objected to advertisements being carried in the Lorain Journal by automobile dealers from, say, Cuyahoga County, and from Cleveland?

A. I don't know.

Q. Had you ever heard such subject matter discussed at your automobile dealers association meetings?

A. No, sir.

Q. At any time that you personally knew, now you personally, know about, was there ever under discussion the subject matter of the Lorain Journal's refusal to accept advertisements of automobile dealers from Cuyahoga County, of any automobile dealer from Cuyahoga County, on the ground and the ground solely that the business or place of business was located in Cuyahoga County?

A. In my capacity, no, as a member, as I have been in any capacity,—not as a member nor as an official of the association.

Q. You say a member?

A. Mr. Maloy and I discussed that situation once but not in any capacity or in any connection of the auto dealers of the county.

Q. There again you are speaking personally?

A. That's right.

Q. You know of no such subject coming up before the body as such?

A. No, sir.

[fol. 766] Q. Do you know of any instance where the Lorain Journal had turned down the request of some automobile dealer from Cuyahoga County and that matter was brought to the attention of the Lorain County dealers association?

A. Not during my term of office, nor at any meeting that I was present at that I can recall.

Q. When did you hear it?

A. From Mr. Maloy. I never saw the rejection or knew of it other than the fact that he made the statement that it had been made.

Q. Is your attention and mine going to the Singleton matter as such? I am trying to exclude that.

A. That is the only one I know of.

Q. That is the only one you know of?

Mr. Fulton: That is all.

Mr. Kramer: If the court please, I offer this letter in evidence for a very limited purpose which I would like to state. Plaintiff's Exhibit 161.

In January of 1950 we moved this court for the production of certain documents. Item 8 called for the production, among other things, of all letters from January 1, 1946 to date, passing between the Lorain Journal Company, its

officers, agents or employees, and any other corporation, concern or person with reference to, and then follows a list of items. Item D refusal of the Lorain Journal Company to [fol. 767] accept advertising from any advertiser or prospective advertiser.

Mr. Fulton, after discussion, signed along with the government, and the court signed it also on December 29, 1949, a stipulation giving that motion as modified by stipulation, the effect of an order, of this court, and I offer the document for the purpose of impeaching the Lorain Journal Company and its officers, and if the offer isn't now accepted, I shall renew the offer when any witness from the Lorain Journal Company takes the stand.

The Court: In the event they do take the stand and they offer such documents, I will entertain your objection to it on the grounds indicated.

Mr. Fulton: That is, if at the time we make reference to this or offer it?

The Court: This letter or any letter which you were requested to produce.

Mr. Kramer: That is all.

Mr. Fulton: It is just marked for identification. I don't understand that that is received in evidence.

Mr. Kramer: No, it is not.

The Court: It has been offered and I said I will entertain the objection to it at the time it is offered by the defense, and at this time it will not be received.

[fols. 768-804] Mr. Kramer: If the court please, we are having to change the subject because this gentleman is from Chicago and following him will be a gentleman from Canton, Ohio.

* * * * * * *

Gus Atthanasoff, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Gus Atthanasoff.

By Mr. Altman:

Q. Will you state your name, please?
A. Gus Atthanasoff.

Q. Will you spell that please?
A. A-t-t-h-a-n-a-s-o-f-f.
Q. What is your home address?
A. 960 North Central Drive.
Q. In what city?
A. Lorain.
Q. Lorain, Ohio, is that right?
A. Yes.
Q. And in what business are you engaged?
A. Tavern business.
Q. Would you state with what particular business enterprises you are engaged, the names of them?
A. The Show Boat and Vians Barbecue.
Q. And Vians is spelled how?
A. V-i-a-n-s.
Q. What is the business address of the Show Boat?
[fol. 805] A. 766 Broadway.
Q. In the City of Lorain?
A. Yes.
Q. When did the Show Boat open for business?
A. On February 10, 1950.
Q. Is a Mr. Rudolph associated with you in the Show Boat?
A. Yes, sir.
Q. When were arrangements made, as near as you can recall, for advertising the Show Boat in the Lorain Journal?
A. The arrangements were made about a week or two previous to the opening.
Q. And could you detail the arrangements that were made with the Journal?
A. Well, Mr. Rudolph took care of most of that, and there was a contract made on February 10th for a 20-inch ad to run regular besides the grand opening ad that he had made arrangements for.
Q. Would you state when the grand opening ad was to appear?
A. February 10th.
Q. February 10th, for opening day, is that right?
A. Opening day.
Q. That opening ad appeared in the Lorain Journal as was contracted for, is that right?
A. That's right.
Q. Do you recall when you first heard that radio station

WEOL was to put on a broadcast for the Show [fol. 806] Boat?

A. It was either the following Monday or Tuesday that Mr. Rudolph informed me they were going to come down to make a wire recording which was to be broadcast on the 17th, Friday night.

Q. They were coming down to make a recording where?

A. At the Show Boat. They were coming down Thursday night at nine o'clock to make the recording at the Show Boat which would be broadcast Friday night at six o'clock.

Q. Can you give me the dates? Monday and Tuesday would be February what—the 13th and 14th, 1950?

A. 13th and 14th was the Monday and Tuesday.

Q. What day were they supposed to come to make the on-the-spot recording?

A. The 16th. I think it was on Thursday.

Q. Who made the arrangements for the broadcast?

A. Mr. Rudolph.

Q. Now, where was Mr. Rudolph when you were contacted by the representative of radio station WEOL on Thursday, February 16th?

A. He was in Florida.

Q. Was the Show Boat to pay for the broadcast time over radio station WEOL?

A. No.

Q. Was this broadcast time to be given free by radio [fol. 807] station WEOL?

A. That's right, to be given free.

The Court: I wish you would speak up louder.

The Witness: It was to be given free. No charge at all for the time on the radio.

Q. Now, on Thursday, February 16, 1950, did a representative of radio station WEOL come to the Show Boat and make a recording of proceedings there?

A. Yes, he did.

Q. At what time was that on the 16th?

A. Approximately around 9 or 9:30.

Q. In the evening?

A. In the evening?

Q. Were you subsequently contacted by a person known to you to be a representative of the Lorain Journal concerning broadcasting over radio station WEOL?

A. Yes, I was. I was contacted the following day.

Q. By whom?

A. By Chuck Luther, I believe his name is.

Q. Had you had previous dealings with Mr. Luther about your advertising?

A. No, outside of working, making arrangements for the ads at that time.

Q. But you had met him previously, is that correct?

[fol. 808] A. Yes.

Q. And you knew Mr. Luther, is that right?

A. Yes, sir.

Q. Now, there was a conversation between you and Mr. Luther at that time, was there?

A. Yes, there was.

Q. What was said by Mr. Luther and what was said by you?

A. Well, Mr. Luther asked me if we were seriously thinking of going on the radio, that he heard the night before, somebody was in to make the recording and somebody from the Journal staff happened to be in there when the announcer announced to the public in there what was going on and anybody interested in listening in the following day might tune in at six o'clock and the broadcast would be on that was being taken at the time being.

Q. And what did you say to him?

A. Well, I told him that this wasn't a paid advertisement, it was something that was offered to us free by the radio station, and that they had made arrangements with Mr. Rudolph on it and that there was no harm in doing it and that we had no further contract with them or had no further intention of advertising on the radio other than the fact it was offered to us free and we took advantage of it.

Q. Did you tell him why it was offered to you free?

A. Being that it was a new place just opened up and as [fol. 809] a rule they explained that is their policy.

Q. The radio station?

A. The radio station's policy on new places, a matter of introduction to a new spot.

Q. What did Mr. Luther reply to that?

A. Well, he said he didn't know anything about that and that if I wanted to I would have to do down and see Mr. Self and discuss it with him.

Q. And did you in fact go down and see Mr. Self with Mr. Luther?

A. Yes, I did.
Q. When was that?
A. Oh, it was right after I talked with Chuck.
Q. That was on what day?
A. On Friday the 17th.
Q. Friday the 17th. Now, what was said in the conversation that was held with Mr. Self and Mr. Luther?
A. Well, I explained the same thing to Mr. Self as I told to Chuck, that the advertising wasn't a paid advertisement, it was something Mr. Rudolph had made arrangements for, I knew nothing of until he just told me about it, and that they were going to broadcast and it was something free. Mr. Self said to me that as long as we was going on the radio we would not be able to stay with the paper.
Q. Did he give you any reason for that state-
[fol. 810] ment?
A. Because we were going on the radio that evening. We hadn't gone on yet; this was in the afternoon I spoke to him. I told him, "Well, I didn't make the arrangements, Mr. Rudolph did and I don't know how far he went ahead with the station." Mr. Self made the remark that Mr. Rudolph should have known better than to go ahead with something like that without knowing it was going to hurt him as far as the paper was concerned."
Q. He said that about Mr. Rudolph?
A. That's right. "Mr. Rudolph should have known better."
Q. Did he say anything else about Mr. Rudolph's previous experience with the Lorain Journal?
A. That Mr. Rudolph had had previous experience on the same account.
Q. In connection with any of his other establishments?
A. In connection with his other establishments.
Q. Can you recall when the next advertisement was supposed to appear in the Lorain Journal for the Show Boat?
A. Well, that same afternoon there was supposed to appear an advertisement and it was in.
Q. The advertisement did appear on February 17th?
A. That same afternoon it was in.
Q. That was your normal size advertisement, not your opening?
A. That's right.
[fol. 811] Q. Did the broadcast take place as scheduled?

A. Yes, it did.
Q. That was on radio station WEOL?
A. Yes.
Q. At what time, do you recall?
A. Six o'clock.
Q. On what day?
A. Friday the 17th.
Q. Have you tried since February 17th to place further advertisement in the Lorain Journal for the Show Boat?
A. Well, I personally didn't come down because Mr. Self said this thing would have to wait until Mr. Rudolph came back, and he would discuss it with him. And in the meantime I had the contract of Vians with the Lorain Journal and Mr. Luther came up the following week to check on the ad to be run for Vians and I asked him what about the ad for the Show Boat and he said, well, there wasn't going to be any ad for the Show Boat. He said I would have to wait until Mr. Rudolph came back, and he was going to discuss it with him.
Q. That conversation happened in Vians?
A. No, it happened at the Show Boat.
Q. Can you recall just when that happened?
A. Oh, I think it was the following Tuesday.
Q. The following Tuesday?
[fol. 812] A. the 21st.
The Court: I'm afraid I missed his statement as to who Mr. Rudolph was.
The Witness: Mr. Rudolph is a partner.
The Court: Your partner?
The Witness: That's right.
The Court: Oh, I see.
Q. When was this last conversation, the one you are just talking about which took place with Mr. Luther?
A. About the 21st of February. I believe it was on Tuesday.
Q. Was there anyone else present at the time?
A. No, there wasn't.
Q. Now, have advertisements for the Show Boat since appeared in the Lorain Journal?
A. No, they haven't.
Q. Has your contract been cancelled; have you received a letter of cancellation?
A. No, we haven't.

Q. Was the Show Boat billed for the advertising which appeared?

A. I did receive one bill from them.

Q. That bill was for the opening advertisement and the advertisement on the 17th, is that correct?

A. That's right.

Q. Do you recall what the contract rate was between [fol. 813] the Show Boat and the Lorain Journal?

A. 96 cents an inch.

Q. 96 cents per inch?

A. 96 cents per inch.

Q. Do you recall what the rate was at which you were billed on the bill which you received?

A. $1.25 an inch.

Mr. Altman: No further questions.

[fol. 814] Mr. Fulton: No examination.

DAN D'ANDREA, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Dan D'Andrea.

By Mr. Seidler:

Q. Will you state your name, please?
A. Dan D'Andrea.
Q. Spell your last name.
A. D'-A-n-d-r-e-a.
Q. What is your home address?
A. 768 Warwick Drive, Sheffield Lake, Ohio.
Q. What is your business, sir?
A. I'm in the music business.
Q. Where is your business located?
A. 2825 Pearl Avenue.
Q. In what city?
A. Lorain.
Q. Lorain, Ohio?
A. Yes, sir.
Q. How long have you been in that business?
A. I have been in that business since July, 1947.
Q. Do you now advertise on Station WEOL?

[fol. 815] A. I do.

Q. Do you now advertise in the Lorain Journal?

A. No, I don't.

Q. When did you first advertise over Station WEOL?

A. Approximately October 1948.

Q. Did you at that time have a contract for advertising with the Lorain Journal?

A. I did.

Q. Following the occasion on which your radio broadcast was first heard, did you have any conversation with an individual known by you to be a representative of the Lorain Journal?

A. I did.

Q. With whom, sir?

A. Mr. Grills, James Grills, a representative of the Lorain Journal.

Q. Did you know Mr. Grills at the time?

A. Yes, sir.

Q. Had he been the individual who customarily solicited your ads?

A. He was.

Q. Where did the conversation take place?

A. In my store.

Q. Do you recall when?

A. Oh, it was a few days prior to October 28, 1948.

Q. Will you please relate, to the best of your recollec- [for. 816] tion, exactly what was said during that conversation?

A. Yes. I started advertising on the station, and Mr. Grills came in for the weekly ad——

Q. Did Mr. Grills come in at your invitation?

A. No, he came in each week for my weekly ad. At that time, in advertising on the station I would give the station four records. I had a 15-minute program——

Q. Well, Mr. D'Andrea, supposing you just answer the question as to what was said to you by Mr. Grills.

A. I was getting right to that. When Mr. Grills came in I told him I would like to advertise my radio program on the Lorain Journal, and he told me he couldn't accept that ad. I asked him why, and he said he had orders that he could not accept any advertising in the Lorain Journal that was advertised on the station, that is, the radio station.

Q. As I get it, the ad which you proposed to insert mentioned your program on WEOL?

A. That's right.

Q. What did you respond to that, sir?

A. Well, there was nothing I could do. I just gave him another ad then.

Q. You gave him an ad which did not include a reference to that program?

A. That's right, and just a few days later I received [fol. 817] a letter from the Lorain Journal.

Q. Before you go any further, do you recall any further details of that conversation?

A. No, sir.

Q. Did Mr. Grills speak to you regarding the advisability of advertising over WEOL?

A. Well, he made it known to me that I just couldn't advertise on the station if I wanted to continue advertising in the paper. I can't exactly——

Q. He stated as much to you?

A. That's right. I can't exactly remember the conversation. I got a little upset, of course, but I can't remember right offhand.

Q. Did you indicate to Mr. Grills, or did you state to Mr. Grills that you desired to advertise in the Lorain Journal as well as on WEOL?

A. Absolutely. I didn't give him any reason to think that I was going to discontinue my advertising in the paper.

Q. Did you give him any reason why you wanted to advertise in both?

A. Certainly. I thought it would benefit my business, especially my type of business, the record business. Radio advertising is very fine advertising.

Q. Mr. D'Andrea, I hand you Government's Exhibit 162 [fol. 818] and ask you to tell me if this is the letter which you received from the Lorain Journal (Handing letter to witness)?

A. This is the copy,

Mr. Seidler: If your Honor please, I wish to offer in evidence Government's Exhibit 162.

The Court: It may be received.

Q. Mr. D'Andrea, can you list for us the commodities which are handled in your store?

A. Yes, I can.

Q. Will you do that, please?

A. Records, that is, phonograph records, of course, musical instruments, music accessories, radios, television and, of course, that includes pianos.

Q. Can you tell us where these commodities originate, that is, where they are manufactured?

A. Well, all of the record distributors, I would say the majority of them are here in Cleveland, some in Detroit, Pittsburgh, New York, Cincinnati.

Q. However, as far as records are concerned, are they sent directly to you from the manufacturer, or do they come to you through a jobber or wholesaler?

A. No, they are shipped directly from the distributor.

Q. Directly from the distributor?

A. The distributor receives them from the fac- [fol. 819] tory.

Q. And the distributor is located where?

A. In Cleveland, the majority of them.

Q. Are any located outside, any distributors located outside the State of Ohio?

A. Pittsburgh, Pennsylvania.

Q. You receive records directly from a distributor located in Pittsburgh, Pennsylvania?

A. Yes, sir. We cannot buy records from the factory direct.

Q. With reference to the pianos, where are they manufactured?

A. In Castle, Indiana—New Castle, Indiana. Excuse me.

Q. In New Castle, Indiana?

A. Yes, sir.

Q. Are the pianos shipped direct to your store from the manufacturer?

A. Yes, sir.

Q. Do you ever have occasion to have a piano shipped direct from the manufacturer to the customer?

A. No, sir. That is prohibited.

Q. Now, as to the ordering of pianos from the manufacturer, do you customarily order on the basis of an order which you have from a customer?

A. Not all the time, no.

Q. Do you at any time order pianos on the basis of a preexisting order which you have from a customer?

[fol. 820] A. I don't quite understand that.

Q. Well, let me illustrate. A customer will come into your store, and says he wants a piano, a particular model and particular type of piano and you do not have it in the store. Will you on the basis of that customer's request order the piano from the manufacturer?

A. Yes, I have done business that way.

Q. You mentioned several other commodities, television sets and other musical instruments. Are any of them shipped direct to you from the manufacturer who is located outside of the State of Ohio?

A. Well, yes, and some are shipped from jobbers.

Q. Do you know a Mr. Paul Driscol in Lorain, Ohio?

A. I do.

Q. Do you know what business Mr. Driscol is in?

A. Well, he is in a competitive business to mine, a music store.

Q. And I take it from your answer you consider Mr. Driscol to be a competitor of yours?

A. I do.

Q. Mr. D'Andrea, do you pay the entire cost of your advertising over WEOL?

A. I do.

Q. Is any part of it borne by a national advertiser?

A. No—I should probably retract that statement. I mean [fol. 821] I do. We do have cooperative ads that different companies go in with us, I mean they probably pay 50 per cent.

Q. Can you elaborate on what you mean by a cooperative ad, giving the name of the distributor?

A. Well, for instance, if I decide to advertise an RCA Victor record, or RCA Victor records, they would go in, they would pay half the ad with me, if I put in a big ad. In other words, if it was a hundred dollar ad I would get credit for fifty dollars from the concern and I would pay fifty dollars.

Q. Where is the RCA Victor Company located?

A. Chester Avenue, the distributors.

Q. The check would come to you, or your credit would be established at the Cleveland office?

A. That's right.

Mr. Fulton: By "Chester Avenue" you mean in Cleveland, Ohio?

The Witness: Yes, sir.

Q. Does the RCA Victor Company, or does any national advertiser, pass on your advertising, that is, do they give you suggestions?

A. Oh, yes. They must have a copy, definitely, a copy of the advertisement, and it must be strictly advertising their particular records or whatever it may be—merchandise, I should say.

Q. Does the advertising copy ever originate with [for 822] the manufacturer or with the distributor?

A. Yes, they give us what we call mats.

Q. They ship the mat to you or to the——

A. Well, it's given to me through the salesman.

Q. And you in turn turn that over to Station WEOL?

A. No, this is strictly paper now.

Q. That's what I wanted to clear up. We are speaking now of the newspaper advertising?

A. That is right.

Q. At the time when you were in the Lorain Journal?

A. Yes.

Q. Did the national distributor or manufacturer ever ship the copy direct to the newspaper?

A. No.

Q. Speaking now of your radio advertising, Mr. D'Andrea, do you ever receive from the national advertiser a transcription to be played over WEOL containing the national advertisement?

A. I have not so far.

Q. Have they ever shipped a transcription direct to the station for you?

A. No, sir.

Mr. Seidler: No further questions.

[fol. 823] Mr. Fulton: No examination.

Mr. Seidler: You may step down.

Mr. Kramer: If the Court please, I should have handed this folder, with some regret, I confess, for the size of it, to the Court. This is a set of exhibits, Volume 2. I think it contains substantially all that we propose to offer, and I should say that yesterday the Court reminded us that counsel were to get together at the close of the trial to see that

the Court had one original copy of each exhibit. I would like to explain to the Court why I have given you the originals rather than offering them in evidence. The only originals you have there with rare exceptions, are those that belong to the Elyria-Lorain Broadcasting Company, and it was my thought they could be obtained back from the Court a little earlier than they would be obtained back from the Clerk if we used the originals in evidence.

The Court: The reason I requested copies was because of my usual habit of marking notations on the exhibits. I do not wish to put any marks or any notations on any orig- [fol. 824] inal exhibits. I like to work with copies of exhibits and copies of briefs so that I can mark them and put down notations and thoughts as I have them at the moment, which may change as the days go on and I may change my mind about it. I hesitate to mark up exhibits that way and show my original thought on it and show my change of thought on it. That's the reason I suggested and asked that it be done that way. If it can't, of course, it can't be done. I had hoped I could have copies of all the exhibits. If I can't I will keep the originals and will refrain from giving away to my usual habit of marking them.

Mr. Kramer: You may have copies, sir. I was misled, in that I thought you preferred originals rather that a positive photostat. A negative photostat is very bad. What we will do is make good positive photostats.

The Court: Either that or typewritten copies, as long [fol. 825] as they are legible.

Fred C. Williams, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Fred C. Williams.

By Mr. Kramer:

Q. Please state your name.
A. Fred C. Williams.
Q. Where do you live, sir?
A. Avon Lake, Ohio.
Q. Where is your place of business?

A. Lorain, Ohio.
Q. What is your business?
A. Automobile dealer.
Q. What is the address of your automobile dealer business?
A. 1735 Broadway.
Q. How long have you been in that business?
A. Since 1941.
Q. Do you advertise in the Lorain Journal?
A. I do.
Q. Have you ever advertised over radio station WEOL?
A. Yes, sir.
Q. What if anything did you do to secure advertising time over WEOL?
A. Signed a contract.
Q. Approximately when did you sign the contract?
A. September 30, 1948.
Q. On September 30, 1948. I will ask you whether or [fol. 826] not you had an advertising contract with the Lorain Journal?
A. Yes, sir.
Q. In October, 1948, calling your attention now to that month, I will ask you if you had any conversations with any persons that you knew were employees or representatives of the Lorain Journal regarding your advertising over WEOL and in the newspaper.
A. Yes, sir.
Q. With whom were these conversations held?
A. With Mr. Maus.
Q. Did you know at that time what Mr. Maus' position was with the Journal?
A. No.
Q. Had he been the man who had been handling your advertising for some time?
A. A very short time.
Q. A very short time?
A. Yes, sir.
Q. Did he come to your office?
A. Yes, sir.
Q. And when he entered into conversation with you, was there anyone else within hearing distance?
A. Not that I recall.

Q. Do you remember now what Mr. Maus said and what you said?

A. We had several conversations. Our first conversation was that he attempted to sell me the idea that radio advertising wasn't a paying proposition, that when there [fol. 827] were over two people in the room the radio advertising was valueless on account of conversation. He suggested I use the radio station for ten days to two weeks and desist from advertising in the Lorain Journal, until I ascertained the value of radio advertising.

Q. Do you remember now whether or not he used the words "give the radio station an exclusive try"?

A. That was the gist of the conversation.

Q. But you don't remember whether he used those words or not?

A. Oh, I couldn't remember that?

Q. What did you say to him?

A. I told him I would do that.

Q. You did do that, is that right?

A. Yes, sir.

Q. Did Mr. Maus ever return to your office?

A. Yes, sir.

Q. When, about?

A. Oh, ten days later, two weeks.

Q. On this second conversation with Mr. Maus, was there anyone present within hearing distance?

A. Not that I recall.

Q. What did Mr. Maus say to you?

A. He said that inasmuch as the Lorain Journal had never allowed outside used car dealers to advertise in their paper that they felt that they were justified in fighting fire [fol. 828] with fire, that I could make my choice, I could either advertise on the radio or the Lorain Journal, but I couldn't do both.

Q. And what did you say to Mr. Maus?

A. Well, I told him if I was thirty-five years younger I would tell him to go some place, but that I was looking at the thing from a dollars and cents standpoint and the Lorain Journal was the best advertising medium.

Q. How old are you, Mr. Williams?

A. What is that?

Q. How old are you?

A. 56.

Q. Do you know—and please listen to this question very carefully—do you know whether the Lorain Journal did decline to accept, uniformly declined to accept ads from auto dealers in its classified columns where those dealers were not located in Lorain?

A. I can't answer.

Mr. Fulton: May I have that question read?

(Question read by reporter)

Q. In the City of Lorain?

A. I don't think I can answer that question.

Q. Thank you, sir. Did you have any other conversations with Mr. Maus other than the two you have related regarding your advertising over WEOL and in the newspaper [fol. 829] concurrently?

A. Yes, he very kindly wrote out the letter of cancellation of the contract to the radio station for me.

Q. You mean he dictated it, or wrote it out in his own handwriting?

A. That's right.

Q. And did you sign it?

A. Yes, sir.

Q. Did you mail it to the radio station?

A. Yes, sir.

Q. Since that letter was written have you ever advertised over radio station WEOL?

A. No, sir.

Q. Following your conversations with Mr. Maus, and his activities as a scrivener, did you consider advertising in the Cleveland papers?

A. No, sir.

Q. You said you were an automobile dealer. What kind of automobiles do you handle?

A. Authorized Ford Dealer.

Q. New or used or both? Do you handle both new and used cars?

A. Yes, sir.

Q. The new cars are only Fords?

A. That is right.

Q. The used cars are various makes?

[fol. 830] A. That's right.

Q. The parties in this case have stipulated that the Ford

Motor Company has a national advertising contract with the Lorain Journal. Is any part of the cost of your advertising in the Lorain Journal borne by the Ford Motor Company?

A. The national advertising would be, not any new or used cars.

Q. Did you ever come out with what is known as a national ad that carries your name at the top or bottom thereof?

A. Yes, sir.

Q. Who prepares the copy for that ad?

A. I think it is the Thompson Advertising Agency in Detroit.

Q. The advertising agency?

A. In Detroit, Michigan.

Q. But you are sure that whoever does it, it is the advertising agency and not your company who prepares the ad?

A. Yes, I would say so.

Q. If you know, how does the ad get to the Lorain Journal? Is it sent by you or is it sent by someone else?

A. It is sent by someone else.

Q. Do you know who that someone else is?

A. I think it is the Thompson Advertising Agency. I am not sure of that.

Q. And that ad mentions your name, even though it is paid for in part by the Thompson Agency on behalf of Ford, [fol. 831] is that it?

The Court: Paid in part? I didn't understand that.

Q. Is it paid for entirely by the advertising agency or do you contribute part of the cost of it?

A. We contribute part of the cost.

Q. But the payment which is made comes from the agency, the advertising agency, is that it?

A. That is right.

Q. And you reimburse the Ford Company for your share?

A. That's right.

Q. Mr. Williams, do you ever place orders with the Ford Motor Company for automobiles which are based upon specific orders given to you by your customers in Lorain?

A. Yes, sir.

Q. Where do those Ford Automobiles come from to you?

A. Either from Dearborn or Buffalo.

Q. One point I want to find out if your present recollection is quite sure on, Mr. Williams, and that is: are you sure, or are you in doubt, that Mr. Maus used the actual words "fight fire with fire"?

A. No, I specifically remember that.

Q. You are sure he used those words?

A. Yes, sir.

Mr. Kramer: No further questions, Mr. Williams.

[fol. 832] Mr. Fulton: No questions.

Mr. Kramer: Step down, sir. Thank you very much.

Mr. Kramer: The Court will recall that yesterday you returned to the Government counsel a document which you said you couldn't read, and which Government counsel was unable to read. We typed a copy for you. That is Exhibit [fol. 833] 160 (Handing exhibit to court).

Ray Wissman, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Ray Wissman.

By Mr. Kramer:

Q. State your name, please.

A. Ray Wissman.

Q. Spell your first name and your last name for the reporter.

A. R-a-y W-i-s-s-m-a-n.

Q. Where do you live, Mr. Wissman?

A. Lorain, Ohio.

Q. Where do you live in Lorain?

A. 801 Mildred.

Q. What is your business?

A. Jeweler.

Q. Retail jeweler?

A. Yes, sir.

Q. Where is your place of business?

A. Lorain, Ohio.

Q. Where?

A. 613 Broadway.

Q. How long have you been in that business, Mr. Wissman?

A. Five years.

Q. Do you now advertise in the Lorain Journal?

A. I do.

Q. Did you ever enter into a contract with WEOL to ad-
[fol. 834] vertise over the air?

A. Yes, I did.

Q. When was that?

A. That was in the fall of 1948.

Q. At the time you entered into a contract to advertise over WEOL, did you have a contract with the Lorain Journal for advertising?

A. I did.

Q. Did you have any conversations with any representative of the Lorain Journal regarding the desirability of advertising over both WEOL and in the newspaper at the same time?

A. I did.

Q. Where were those conversations held?

A. In my store.

Q. Was anyone else within hearing distance?

A. No, sir.

Q. And who was the representative of the Lorain Journal with whom you had those conversations?

A. Well, I had conversations with three.

Q. I am referring now to your first conversation on that subject.

A. That was an advertising solicitor.

Q. Do you remember his name?

A. I do not.

Q. Had you ever seen him before that conversation?
[fol. 835] A. Yes.

Q. What were the occasions upon which you saw him prior to the conversation? Did he come in to solicit ads?

A. He came in to solicit ads, that's right.

Q. Can you speak just a little louder, sir?

A. Yes, I can.

Q. He came into your store, and what did he say to you?

A. He questioned me about—rather, I should say, he told me he had heard I was going to advertise on the air, and I told him I was contemplating advertising, and then he showed me facts and figures where it was not necessary for

me to advertise over the air, and I told him I thought my dollar should go on the air as well as in the newspaper.

Q. That ended that conversation?

[fol. 836] A. That ended that conversation.

Q. When did you have your next conversation on this subject with a representative of the Lorain Journal?

A. Mr.——

Q. I say when, approximately?

A. Oh, the following week.

Q. Who was it that came in the second time?

A. Mr. Bremer.

Q. Mr. Bremer?

A. Mr. Bremer.

Q. Had you ever met Mr. Bremer before that conversation?

A. Oh, yes.

Q. What did Mr. Bremer say to you?

A. Well, practically the same conversation with Mr. Bremer as with the other representative.

Q. What did you say to Mr. Bremer?

A. I told him the same thing.

Q. Did you then have a third conversation on the same subject with a representative of the Lorain Journal?

A. Yes, I did.

Q. When was that third conversation?

A. The following week.

Q. And with whom was it held?

A. With Mr. Self.

Q. Had you ever met Mr. Self before?

A. Yes, I had met him before.

[fol. 837] Q. Did Mr. Self come to your place of business?

A. Yes, he did.

Q. And was anyone else present within hearing when you and Mr. Self had this talk, as far as you can recollect?

A. No.

Q. What did Mr. Self say to you?

A. Well, Mr. Self explained to me that if I took the other medium of advertising, then I would forfeit my contract, rather they would cancel my ad.

Q. What did you say to him?

A. Well, I told him that I would spend my advertising dollar and I would go on the air.

Q. Did he make any reply to you?

A. He said, "Well, your contract will be cancelled and will be mailed back within a few days."

Q. I hand you Government's Exhibit 163 for identification and ask you to tell me whether or not this is a photostatic copy of a carbon copy of the letter which you received from Mr. Self?

A. (After examining same) Yes.

Q. And that letter reads:

> "Dear Mr. Wissman. You are hereby notified that your advertising contract, dated March 19, 1948, is cancelled thirty days from this date.
>
> Sincerely yours,
> Lorain Journal
> D. P. Self, Business Manager"

[fol. 838]

Mr. Kramer: I offer Government's Exhibit 163 in evidence, if the Court please.

The Court: It may be received.

Q. Well, following the receipt of this letter did you continue advertising over the radio?

A. Yes, I did.

Q. And did you allow your contract for radio advertising to run its natural course?

A. Well, no, I terminated my contract with the radio station.

Q. You terminated when, do you remember?

A. The last of December.

Q. And since the last of December, 1948 have you advertised in the Lorain Journal?

A. Oh, yes.

Q. And since the date you terminated your contract have you had any conversations with any representative of the Lorain Journal regarding the subject of the desirability of advertising over both the radio and the newspaper?

A. No.

Q. Did you get a new contract?

A. Yes.

Q. Following the cancellation of your newspaper advertising contract, pursuant to Government's Exhibit [fol. 839] 163 did you consider advertising your store in any Cleveland newspaper?

A. No, sir.

Q. And what products do you handle in this jewelry store, state it generally?

A. Oh, watches, rings, leather goods, appliances.

Q. Are any of the products which you have just mentioned shipped directly to you from outside of the state of Ohio?

A. Yes.

Q. Which ones?

A. Well, primarily all watches are sent in from outside of the state.

Q. Are sent to you from outside of the state of Ohio? Do you know from where?

A. New York.

Q. New York City?

A. New York City.

Q. How about the appliances, are any or all of them?

A. No, they are sent us, most of them, from out of the state?

Q. The appliances are sent to you from out of the state?

A. Oh, yes.

Q. Do you know from where?

A. Yes.

[fol. 840] Q. Would you please tell the court?

A. Appliances, for instance, irons, radios, roasters, pop-up toasters, and so forth. Is that what you had reference to?

Q. Whatever you had reference to when you stated that appliances were sold in your store.

A. Well, take for instance, Sunbeam toasters out of Chicago, Illinois, Wallace from Wisconsin.

Q. Direct to you, not from a distributor in Ohio?

A. That's right.

Q. Did you ever advertise in the Lorain Sunday News?

A. Yes, sir.

Q. When?

A. Well, I would say five years ago.

Q. That would be approximately 1945, to the best of your recollection?

A. Yes.

Q. Did you ever enter into a contract with the Sunday News for advertising?

A. No.

Q. Have you ever had any conversations with any persons known by you at the time to be employees of the Lorain

Journal, or officers of that paper, relating to the desirability of advertising in the Sunday News?

A. I would like to have you repeat that.

Q. I don't blame you, sir. I won't repeat it. I [fol. 841] will re-phrase it. Have you ever talked with anybody in the Journal about advertising in the Sunday News?

A. Yes.

Q. With whom did you speak?

A. Mr. Bremer.

Q. And where did the conversation occur?

A. In my store.

Q. In what year did it occur?

A. 1945.

Q. Do you remember exactly what Mr. Bremer said to you? Now, yes or no to that.

A. Do I remember exactly?

Q. That's right.

A. Yes.

Q. You do?

A. Yes, sir.

Q. Tell the court exactly what Mr. Bremer said, in so far as you recollect it.

A. Well, I ran an ad in the News, the Sunday News, and following the ad Mr. Bremer approached me and advised me not to advertise in the Sunday News.

Q. No, I asked you if you remembered exactly what he said. Did he say, "I advise you not to advertise in the Sunday News".?

A. That's right.

Q. Excuse me. Is that all you can remember of what [fol. 842] he said exactly?

A. Well, he didn't say more than that.

Q. Now, state the substance of what he said in addition to the words you just quoted?

A. The substance was, it didn't pay me to advertise in the Sunday News because of their circulation and their rates in accordance with the Lorain Journal rates, my dollar was not spent wisely.

Q. I will ask you whether or not he suggested that you contact other Lorain Journal advertisers to see what their views were on the subject?

A. Yes, he did.

Q. What did he say to you along that line?

A. He asked me to approach the manager of Sears.
Q. Sears, Roebuck & Company?
A. Sears, Roebuck & Company. And Mr. Ben Weintraub of Klein's Department Store.
Q. And did you approach them?
A. Yes.
Q. And following your approach to them did you cease to advertise in the Sunday News?
A. Yes.
Q. By "approach" you mean you had a conversation with each of them?
A. Yes, I had.
[fol. 843] Q. And the subject of the conversation was what?
A. Regarding advertising.
Q. In the Sunday News?
A. In the Sunday News.
Q. Did you have more than one conversation with Mr. Bremer in 1945 on the subject of your advertising in the Sunday News?
A. Just the one.
Q. How many times did you place an advertisement in the Sunday News in 1945, approximately?
A. I ran two ads.
Q. Have you ever run an ad since that time in the Sunday News?
A. No, sir.
Q. When did you say you came to Lorain? Perhaps I didn't ask you. When did you come to Lorain?
A. In 1945, March of 1945.
Q. So that you were new in the community at the time you advertised in the Sunday News?
A. Yes, I was new.
Q. When Mr. Bremer suggested that you approach other business men regarding advertising in the News, did he or did he not in any way suggest that since you were a newcomer, talking to other businessmen would be advisable?
A. Yes.
[fol. 844] Q. You are sure of that now?
A. Yes, I am positive of that.
Q. Do you ever order appliances in your store from manufacturers out of the state in response to a specific order placed with you by a customer in Lorain?

A. Yes.

Q. When those orders are filled by the manufacturer, are the goods shipped direct to you or to the customer?

A. Well, we call it "drop shipping direct from the factory."

Q. Drop shipping direct from the factory? And where is it dropped?

A. At my store.

Q. Is any part of your advertising in the Lorain Journal paid for by anyone else other than yourself?

A. Oh, yes.

Q. Who pays for the ads?

A. Well, let's say the Bulova Watch Company and Gruen Watch Company; they have split advertising plans, and they help defray the expense of the ad.

Q. Do they reimburse you or pay the newspaper directly?

A. No they reimburse me.

Q. Would it be fair to describe these ads for, let's say a Bulova watch as "Bulova Watch" and then underneath "Ray Wissman", "Jeweler"?

A. That's right.

Q. Is the copy for that ad submitted to the newspaper by [fol. 845] you or by the Bulova Watch Company?

A. By the Bulova Watch Company.

Q. Directly?

A. That's right.

Q. And you pay for the ad?

A. I pay for the ad.

Q. You get the check from Bulova?

A. I credit them.

Q. Credit Bulova?

A. Yes.

Q. When you were advertising over the radio did the Bulova Watch Company and any other manufacturer whose products you advertised, ship to the radio station electrical transcriptions?

A. No.

Mr. Kramer: No further questions.

[fol. 846] Mr. Fulton: No questions.

STANLEY P. BARNETT, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Stanley P. Barnett.

By Mr. Kramer:

Q. What is your name, and please spell the last and the first name?

A. S-t-a-n-l-e-y P. B-a-r-n-e-t-t.

Q. What is your home address?

A. 3002 Huntington Road, Shaker Heights, Ohio.

Q. What is your occupation?

A. Newspaper man.

Q. What is your position now as a newspaper man?

A. Managing editor of the Plain Dealer.

Q. Cleveland Plain Dealer?

A. Cleveland Plain Dealer.

Q. How long have you been employed as managing editor of the Cleveland Plain Dealer?

A. 13 years.

Q. Were you with the Plain Dealer in some other capacity before that?

A. Yes.

Q. What was that?

A. As reporter, copy reader, state editor, news [fol. 847] editor.

Q. So that you were also state editor of the Plain Dealer at one time?

A. At one time, yes.

Q. When were you state editor of the Plain Dealer?

A. State editor about 20 years ago, more than 20 years ago.

Q. For how long?

A. 7 years.

Q. Sometime between 1920 and 1930, would that be a fair statement of when you were state editor?

A. That's correct.

Q. The evidence in this case has established the fact that 4,742 copies is the average net circulation of your paper in Lorain, Ohio, daily. Do you know what edition or editions of the Plain Dealer are circulated in Lorain?

A. The daily paper?

Mr. Fulton: Are you right about those figures?
Mr. Kramer: Just a moment.
Mr. Fulton: I thought it was 11,000.
Mr. Kramer: That was Sunday.
Mr. Fulton: I beg your pardon.
Mr. Kramer: We are speaking now only of daily.

A. Our first edition and second edition.
[fol. 848] Q. Your first edition and your second edition?
A. That's correct.
Q. Does the Plain Dealer have a correspondent in Lorain?
A. Yes, the Plain Dealer does have a correspondent.
Q. What is his or her name?
A. His name is Jack Lavria.
Q. Can you spell the last name?
A. L-a-v-r-i-a, I believe.
Q. Do you know approximately how many words of news copy he submitted to the Plain Dealer in February, 1950?
A. I can't answer that.
Q. Do you know approximately how much his total earnings from the Plain Dealer were in February, 1950?
A. No, I do not know.
Q. Who in your newspaper would know the answers to those two questions?
A. The assistant treasurer and the state editor would know.
Q. Other than national news carrying the Lorain date line, would substantially all the news the Plain Dealer prints from Lorain be sent in from Mr. Lavria?
A. No, we have another correspondent there, a sports correspondent.
Q. Other than sports would it all be sent in by Mr. Lavria?
A. Yes, sir.
Q. What is the name of this sports correspondent?
[fol. 849] A. I believe his name is Sykora.
Q. Can you spell it?
A. Roughly, S-y-k-o-r-a. I am not sure that is correct.
Q. As managing editor of the Cleveland Plain Dealer is it your custom to read the newspaper, I mean do you look at the paper? You have to look at the paper you print every day?
A. Yes, sir.
Q. Can you give us a rough estimate of the amount of

news that you carry each day, if any, from Lorain? In other words, does it average as much as a column a day?

A. No, no, sir, I should say roughly 300 words daily, on an average.

Q. Roughly 300 words daily on the average. Would that include sports?

A. No, sir, that is in addition to sports.

Q. What would you say the daily average is with respect to sports?

A. It is a very difficult question to answer but I should judge 100 or 150 words, certainly not more.

Q. Is time of the essence in the publication of news stories?

A. Yes, sir.

Q. Do you know approximately what time of day copies of the Plain Dealer reach Lorain?

A. I might make a guess on that. I should say the first edition probably about 12 o'clock, shortly after 12 mid-[fol. 850] night; the second edition probably, oh, I suppose two or three o'clock in the morning.

Q. And the editions that are circulated in Lorain are only the first and second editions, is that it?

A. Yes, sir.

Q. Do you know whether the Lorain Journal is a morning or afternoon newspaper?

A. The Lorain Journal is an afternoon newspaper.

Q. Does the fact that the Lorain Journal is published in the afternoon and that the Plain Dealer is published very early in the morning have any effect upon any competition that may exist both locally and nationally between the Cleveland Plain Dealer and the Lorain Journal?

A. We never consider the Lorain Journal in any of our operations.

Mr. Kramer: No further questions, if the Court please.

Mr. Fulton: No questions.

Mr. Kramer: Thank you very much.

The Court: I think we will take a fifteen-minute recess.

[fol. 851] (Recess taken).

AUGUST ILG, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of August Ilg.

By Mr. Kramer:

Q. Will you state your name, please?
A. August Ilg.
Q. Spell your first and last names.
A. A-u-g-u-s-t I-l-g.
Q. What is your home address?
A. 2831 East Erie Avenue.
Q. What city?
A. Lorain, Ohio.
Q. What is your business address?
A. 549 Broadway, Lorain.
Q. Lorain, Ohio?
A. Yes, sir.
Q. What is your business?
A. Motion picture theater exhibiter.
Q. How long have you been a motion picture exhibiter?
A. 39 years coming 1st of July.
Q. All of those 39 years in Lorain?
A. Yes, sir.
[fol. 852] Q. Do you advertise in the Lorain Journal?
A. Yes.
Q. Have you ever advertised over WEOL?
A. Yes.
Q. Are you a stockholder in WEOL?
A. Yes.
Q. How many shares do you own, if you know?
A. 8.
Q. 8 shares?
A. Yes.

Q. Did you ever enter into a contract with WEOL for advertising time?

A. Yes.

Q. And did you have an advertising contract with the Lorain Journal at the time you entered into a contract with WEOL?

A. Yes.

Q. Did you ever go on the air pursuant to that contract?
A. Yes.
Q. After you went on the air, Mr. Ilg, and by the air I mean on WEOL, did you have any conversations with anybody that you knew was an employee or officer of the Lorain Journal regarding the desirability of going on the air?
A. Yes.
Q. What was the name of the officer or employee?
[fol. 853] A. Mr. Self.
Q. Mr. Self?
A. Yes.
Q. Where did the conversation occur?
A. In his office.
Q. In his office?
A. Yes.
Q. Did you go to see him or did he come to see you?
A. I came to see him.
Q. What I meant to ask you was: did he ask you to come to see him or did you go voluntarily?
A. (No response).
Q. Did he ask you to come to see him?
A. No.
Q. Well, when you had the conversation with Mr. Self, was there anyone else present within hearing distance?
A. No.
Q. Do you remember about when the conversation took place?
A. Oh, sometime in November, 1948.
Q. November, 1948, did you say?
A. Yes.
Q. What did you say to Mr. Self—
A. It might have been October.
Q. October or November of 1948?
A. Yes.
[fol. 854] Q. What did you say to Mr. Self?
A. Why, I told him that there was rumors around that all the advertisers that advertised over the radio were having their contracts cancelled.
Q. What did he says to that?
A. And he agreed to that.
Q. He agreed to it, you say?
A. Yes, he said "Yes".

Q. Then what happened? Did you say anything to him further or did you just walk out?

A. Well, we had a little conversation. I can't recall all of it, but the gist of it was that it was the policy of the paper they should either advertise in the Journal or over the radio, you have your choice whichever you would like to use.

Q. Did you cancel your contract with WEOL after you had the conversation with Mr. Self?

A. Yes.

Q. Even though you were a stockholder?

A. Yes.

Q. Did you ever consider advertising your motion picture house in a Cleveland newspaper?

A. Not for the last 15 or 20 years.

Q. Is any part of your advertising costs in the Lorain Journal borne by motion picture distributors?

[fol. 855] A. Part of it sometimes.

Q. Sometimes part of it is?

A. Yes.

Q. Do they pay you or do they pay the Journal when they share the cost?

A. They pay me.

Q. Do they ever make suggestions or ship you mats or matrixes, whatever they may be called, respecting your advertising in the Journal?

A. No.

Q. You prepare your own advertising copy as you see fit?

A. Yes.

Q. And your motion pictures that are sent to you come from a Cleveland distributor, do they?

A. Yes, sir.

Q. Now, calling your attention to the year 1945 I will ask you if you ever advertised in the Lorain Sunday News?

A. Yes.

Q. What if anything did you do to secure advertising space in the News, that is to say, did you get a contract with the News or did you just submit copy when you felt like it?

A. No, just verbal agreement.

Q. Just a verbal agreement?

A. Yes.

Q. Did you have any conversations with any persons

[fol. 856] known by you at that time to be connected with the Lorain Journal regarding the desirability of advertising in the Lorain Sunday News?

A. Yes.

Q. With whom were those conversations held?

A. Mr. Bremer.

Q. With Mr. Bremer?

A. Yes, sir.

Q. Did that take place at your office or his, or elsewhere?

A. On the sidewalk.

Q. On the sidewalk near your place of business?

A. Yes.

Q. Who opened the conversation, he or you, if you remember?

A. I imagine Mr. Bremer.

Q. What was said by Mr. Bremer, as nearly as you can recollect?

A. Well, he told me that the Journal didn't like the idea very well of advertising in the News.

Q. What did you say to him?

A. What could I say?

Q. Do you remember having said anything? Did you just walk away, or did you say "Thanks for telling me"?

A. I wish I could remember all those things.

The Court: Who is this you talked to at that [fol. 857] time?

Mr. Kramer: He said it was Mr. Bremer, sir.

The Court: Mr. Bremer?

The Witness: Yes, sir. I felt at that time it wasn't quite the right thing to do——

Q. Just a minute, sir, I am sorry, I haven't asked you what you felt. If you can't remember what you said, that's the end of it.

A. No, I don't.

Q. You don't remember what you said?

A. No.

Q. Did you discontinue advertising in the Sunday News?

A. No, sir.

Q. You continued to advertise?

A. No.

Q. You did stop advertising in the News?

A. Yes.

Q. Did you stop because of what Mr. Bremer told you?
A. Under his suggestion.

Mr. Kramer: No further questions of this witness.

Cross examination of August Ilg.

By Mr. Fulton:

[fol. 858] Q. May I ask what is the name of your theater?
A. Ohio Theater.
Q. The Ohio Theater?
A. Yes, sir.
Q. Did you talk with anybody from the Lorain Journal except these men that you have mentioned about your advertising, that is, Mr. Self about the radio and Mr. Bremer about the Lorain Sunday newspaper?
A. No.

Mr. Fulton: I think that is all.

Redirect examination of August Ilg.

By Mr. Kramer:

Q. Did you want to add anything?
A. I beg your pardon?
Q. Did you mean to stop when you said "No" or did you want to go on and say something else?
A. I had a conversation with Mr. Bremer, but that didn't mean anything.
Q. Are you quite sure you have never discussed the desirability of advertising over WEOL or in the Lorain Sunday News with anybody from the Journal other than Mr. Bremer and Mr. Self?
A. I believe I talked to the boy that came around to take the ads, but that was just general conversation.
Q. You don't remember his name?
A. That was just like between anybody else,
[fol. 859] that didn't mean anything.
Q. You don't remember his name?
A. No, sir.

Mr. Kramer: No further questions.
[fol. 859-869] Mr. Fulton: That is all.

* * * * * * *

MICHAEL RUSINE, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of Michael Rusine.

By Mr. Seidler:

Q. Please state your name.
A. Michael Rusine.
Q. Spell your last name.
A. R-u-s-i-n-e.
Q. Your home address?
A. 1142 Eighth Street, Lorain.
Q. Ohio?
A. That's right.
Q. What business are you in, Mr. Rusine?
A. Well, I have books, magazines, cigars, cigarettes.
Q. You have a store in which you sell these items?
A. That's right.
Q. Where is your store located?
A. 822 Broadway, Lorain, Ohio.
Q. Do you advertise in the Lorain Journal?
A. Yes, sir.
Q. Do you advertise over WEOL?
A. No, sir.
Q. Have you ever considered advertising over [fol. 870] WEOL?
A. No, sir.
Q. Did you ever hear your store announced over WEOL?
A. Yes, sir.
Q. Will you please tell the Court the circumstances surrounding this broadcast which you heard?
A. I guess it was in the 1949 March of Dimes Campaign, the committee of the Junior Chamber of Commerce was sponsoring the Lorain drive in that March of Dimes Campaign and asked me to donate a prize to the Junior Chamber of Commerce which they were going to give away, various prizes, to people in the community—I don't know whether it was Lorain or the County. I don't recall that. When they sent a contribution to the March of Dimes and a letter, "Why, I should give to the March of Dimes", the best letter would be given prizes, and I offered a Kaywoodie Meer-

schaum pipe for a prize to the Junior Chamber of Commerce for this particular drive.

Q. You offered the pipe as a prize to the Junior Chamber of Commerce?

A. That's right.

Q. You mentioned that you heard your name announced in the program over WEOL. Will you elaborate on that, sir? Was that a program sponsored by the Junior Chamber of Commerce?

A. No, it was a news program. They had a program at [fol. 871] 12:30 which was supposed to cover the Lorain County news, and the reporter from Lorain gave the Lorain program first, and with the news they announced this promotion of the March of Dimes and my name was announced as giving a pipe set in conjunction with this March of Dimes Program.

Q. In other words, your name was announced as having given a prize on that program?

A. That's right.

Q. By a news announcer, is that it?

A. I'm quite sure.

Q. Do you recall when you heard that program?

A. Well, I can't tell what date it was, but it was at 12:30, the 12:30 program.

Q. Roughly the month and year.

A. Oh, January.

Q. What year?

A. 1949.

Q. And you stated it was a 12:30 news program?

A. Yes, sir.

Q. Following this broadcast, did you have any conversation with an individual known by you to be a representative of the Lorain Journal?

A. Well, I heard the program——

Q. Did you, yes or no, sir?

[fol. 872] A. Yes, sir.

Q. How soon following the broadcast did you have this conversation?

A. Well, anywheres from five to ten minutes.

Q. Following the broadcast?

A. Yes, sir.

Q. That is, you heard the broadcast and five or ten

minutes later you had this conversation with a representative of the Lorain Journal?

A. Yes, sir.

Q. Who was that, sir?

A. Mr. Self.

Q. Where did the conversation take place?

A. At my store.

Q. At your store?

A. Yes, sir.

Q. Did Mr. Self appear there in person?

A. No, sir.

Q. Did Mr. Self telephone you?

A. Yes, sir.

Q. Were you acquainted with Mr. Self at that time?

A. Yes, sir.

Q. You had spoken with him before?

A. Yes, sir.

Q. Did you recognize his voice on the phone?

[fol. 873] A. Yes, sir.

Q. Will you please relate to the best of your recollection just what was said during this conversation?

A. Well, I heard the program at home and I came right down to the store, and I was there in the store a few minutes. That's where the five or ten minutes comes in. The telephone rang "Mr. Rusine?" "Yes". "This is Mr. Self"—that's right, "Mr. Self, of the Lorain Journal. I just heard your name on the radio." And I'm quite sure he asked me, "Are you supporting the radio station?" I says, "No, I'm not supporting the radio station, I'm supporting the March of Dimes Drive and Junior Chamber of Commerce." And I felt kind of ticklish at first——

Q. No, just what you said.

A. I mean how I felt inside.

Q. Never mind how you felt, just state what was said to you and what you said. Did Mr. Self respond to your statement?

A. I told him that I would be glad to have my name taken off the radio.

Q. And what did he say to that?

A. "I'll appreciate it very much" or something similar to that.

Q. Did you respond to that?

[fol. 874] A. I don't quite understand that.

Q. Well, he said "I'll appreciate that"——
The Court: Have him relate the conversation.
Q. Was anything further said?
The Court: Tell what was said in that conversation.
A. Mr. Self called me and says, "I heard your name on the radio. Are you supporting the radio station?" I says, "No, I'm not. I'm not supporting the radio station. I'm supporting the March of Dimes Drive in Lorain and the Junior Chamber of Commerce." And I told him that I would have my name taken off the radio, but I would still give the prize, and Mr. Self said he would appreciate it, and that was all.
Q. Following this conversation did you have your name removed from the Chamber of Commerce list as announced on the radio?
A. Taken off the radio.
Q. Off the radio?
A. Yes.
Q. You requested that your name not be broadcast on the radio?
A. Yes.
Q. Have you ever advertised on WEOL since that occasion?
A. No, sir.
Q. What specifically is the nature of your business, Mr. [fol. 875] Rusine, that is, you sell the items you mentioned before, books, pencils, papers——
A. Yes, sir.
Q. Anything else?
A. Oh, fountain pens.
The Court: A stationery store?
The witness: Stationery. We sell baseball tickets, I'll be honest about it, during the baseball season and so on and so forth.

Mr. Seidler: No further questions.

Cross examination of Michael Rusine.

By Mr. Fulton:

Q. You say baseball tickets?
A. Yes, sir.
Q. You sell magazines, you said?

A. That's right.
Q. Distribute them, do you?
A. No, retail.
Q. You sell them from your store?
A. Retail only.
Q. What magazines do you handle?
A. Everything. I have the biggest magazine stand in the County.
Q. That's a pretty broad answer "everything". Saturday Evening Post?
[fol. 876]
A. That's right.
Q. Name some others.
A. McCall's, Saturday Evening Post, Collier's, Woman's Home Companion, Ladies Home Journal, Better Homes & Gardens, Good Housekeeping, Lorain Journal, Plain Dealer, Press, News, Chicago Tribune—why, about 700 different publications.
Q. What among your publications sell most and best in Lorain from your experience?
A. You mean the newspapers?
Q. No, the magazines.
A. The magazines? Better Homes & Gardens is the best seller today.
The Court: Are we going into that now?

Mr. Fulton: No, I'm not going into it, but I am going to ask one more question.

Q. I suppose you know that those magazines carry advertisements of goods and merchandise, nationally advertised products, for sale, don't they?
A. Yes, sir.
Q. And those magazines are purchased at your stand by people of your community in Lorain, isn't that
[fol. 877]
right?
A. That is right.
Mr. Fulton: That is all.
[fol. 878] Mr. Seidler: You may step down, Mr. Rusine.

JAMES SOVA, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination of James Sova.

By Mr. Altman:

Q. Would you state your name, please?
A. James Sova.
Q. Will you spell the last name?
A. S-o-v-a.
Q. What is your home address?
A. 1480 North Ridge Road, Lorain, Ohio.
Q. What is your business?
A. Florist.
Q. You have greenhouses there?
A. That's right.
Q. How long have you been in that business, Mr. Sova?
A. I'm in business since 1938 in the same location.
Q. 1938, did you say?
A. That's right.
Q. Where is your place of business located?
A. On North Ridge Road. That's Route 254. The address is 1480.
Q. In what city is that, Mr. Sova?
[fol. 879] A. Lorain.
Q. Did you have an advertising contract with the Lorain Journal in 1948?
A. Yes, sir, I did.
Q. Did you secure advertising time on radio station WEOL?
A. I did.
Q. At what time was that?
A. Well, that was in 1948, in the fall, as soon as the station opened up?
Q. As soon as the station opened up?
A. In fact, I was connected with them before the station opened up. I signed a contract for a year with them.
Q. You were with them practically from the moment they began broadcasting, is that right?
A. That's right.
Q. How soon after you began broadcasting were you visited by a representative of the Lorain Journal?

A. If I recall correctly, just a couple of days after my first ad appeared on the radio.

Q. About two days after?

A. That is correct.

Q. Do you recall who came to see you?

A. I couldn't tell you the name. He represented the Lorain Journal, I understood that.

Q. Do you recall anything about what he looked like?

A. Well, he was a short, stocky built fellow. He came to [fol. 880] the greenhouse and he had his overcoat and hat on. In fact, we talked in the greenhouse, in fact, I would say for about a half hour.

Q. Do you recall what was said? What did he talk to you about?

A. Well, I was in the belief that he came to solicit the weekly ad, and when we were still talking in the greenhouse he started bringing up the statistics, how many papers go out—I mean how many homes read the Lorain Journal, and I believe he said 22,000 or something to that effect, and finally he came around to my advertising on the radio. He asked me—he says, "You are on the radio?" I says, "Yes." Well, then he tried to prove to me that it's a foolish move on my part to be on the radio station for the simple reason that statistics prove that there is only so many percentage of the people listening to the radio and I would be a lot wiser if I cancelled the contract with the radio and go back to the Journal. Finally when I said, "I'll stick with the radio for a while, I want to find out what is going on here in my business," he said, "If you stick with the radio we will have to cancel the contract with the Lorain Journal."

Q. Was you contract cancelled? Did, in fact, your advertisements appear in the Journal after that?

[fol. 881] A. No, sir.

Q. They have never appeared since then?

A. No, sir.

Q. Could we go back over that for a moment. First, was your contract with the Lorain Journal for advertising cancelled?

A. Yes, sir.

Q. Did you receive a letter of cancellation?

A. No, I didn't receive anything, they just refused my ads from that time on. In fact, he gave me the understanding that as long as I'm on the air I shouldn't bother the

Lorain Journal, so I didn't receive no cancellation or nothing, and I just didn't try to advertise in the Lorain paper.

Q. And none of your ads have appeared since that time?
A. No, sir.

Mr. Altman: No further questions.

Cross Examination of James Sova.

By Mr. Fulton:

Q. You are still using the radio station?
A. No.
Q. When your contract expired you quit that too?
A. That's right.

Mr. Fulton: That is all.
[fol. 882] Mr. Altman: That is all.

D. P. Self, one of the defendants, called for cross-examination by the plaintiff, being first duly sworn, testified as follows:

Cross Examination of D. P. Self.

By Mr. Kramer:

Q. Please state your name?
A. D. P. Self.
Q. Spell the last name.
A. S-e-l-f.
Q. What do the D. and P. stand for?
A. Daniel Pressley.
Q. Spell "Pressley."
A. P-r-e-s-s-l-e-y.
Q. And where were you born, sir?
A. South Carolina.
Q. When did you first come to Lorain?
A. In 1947.
Q. When did you first enter the newspaper business?
A. In 1923.
Q. And what newspapers were you with from 1923 to 1947, stating the time when you can remember it, that you were with each?

A. I was with the Greenwood, South Carolina Index Journal from 1923 to 1929; with the Greenville, South Carolina News and Piedmont, from 1929 until 1937; with the Columbia, South Carolina State; from 1937 to 1939; back to the [fol. 883] Greenville News and Piedmont News, South Carolina, from 1939 to 1944; with the Charleston Daily Mail in Charleston, West Virginia from 1944 to 1946; and from August 1946 to March 1947 with the Erie, Pennsylvania Dispatch. From March, 1947 until now, with the Lorain, Ohio, Journal.

Q. What were your capacities, stated generally, with all these papers?

A. Primarily advertising.

Q. Have you been business manager of any paper other than the Lorain Journal?

A. No, sir.

Q. How did you come to be employed by the Lorain Journal?

A. Well, I was offered the position and accepted it.

Q. By whom?

A. Mr. S. A. Horvitz.

Q. Mr. Horvitz?

A. That's right.

Q. At the time you were offered the position I will ask you if you didn't know that Mr. S. A. Horvitz and the publisher of the Erie Dispatch were rather strongly antagonistic to each other?

A. I was not interested in that.

Q. Would you please read the question?

(Question read.)

A. I suspected such; I did not know it.

Q. Mr. Horvitz never told you that that was a factor [fol. 884] in hiring you away?

A. No.

Q. And who is the publisher of the Erie Dispatch, if you know?

A. Mr. Edward Lamb?

Q. L-a-m-b?

A. That's right.

Q. When you came with the Journal you came as business manager is that right?

A. That's correct.

Q. And you did hold that job at all times?
A. That's correct.
Q. Were you ever an employee of the Mansfield Journal?
A. No, sir.
Q. It is the policy of the Lorain Journal to decline to print in the Lorain Journal advertisements by those merchants in Lorain who advertise over station WEOL?
A. I would say under certain conditions.
Q. Would it be fair to say that your answer is yes in some instances, and no on others?
A. No, I wouldn't say that.
Q. You would say that is not an accurate way of putting it?
A. No.
The Court: I didn't get the answer.

(Previous answer read.)

Q. You say that under certain conditions it is the policy [fol. 885] of the Lorain Journal to decline to print in the Journal advertisements by those merchants in Lorain who advertise over WEOL; is that what you said?
A. Correct.
Q. You have no stock interest in the Lorain Journal, have you?
A. No, sir.
Q. Your sole source of revenue from the Lorain Journal is salary and bonus?
A. That's correct.
Q. I hand you Plaintiff's Exhibit 161 and ask you to read that, unless you feel you remember what is in it. (Handing to witness.) You have read the letter?
A. Yes, sir.
Q. Tell me whether or not it isn't true that that letter related to a refusal by the Lorain Journal to print an advertisement in your paper?
A. That's right.
Q. I didn't hear your answer.
A. That's correct.
Q. I call your attention to the month of January, 1950 when Mr. Rashid came to your office in Lorain. Do you remember that?
A. Yes, sir.

Q. Who was present at that conference with Mr. Rashid [fol. 886] besides yourself?

A. I think Mr. Horvitz.

Q. Mr. S. A. Horvitz?

A. I think so.

Q. Was Mr. Isadore Horvitz there?

A. I do not recall.

Q. Was Mr. S. A. Horvitz' attorney, Mr. Parker Fulton, there?

A. I believe so.

Q. And isn't it fair to say that Mr. Fulton carefully went over a notice to produce and stipulation regarding a notice to produce that had been signed by Mr. Fulton and myself in this court?

A. Correct.

Q. And Mr. Rashid was handed a lot of files, was he, or material?

A. Right.

Q. And he was told to look them over and take what he wanted and to leave the rest; is that it?

A. That's right.

Q. No-, do you know whether or not Government's Exhibit 161 was in the list or pile of material that was shown to Mr. Rashid on that occasion?

A. It was not.

Mr. Kramer: I offer in evidence, if the court please, Government's Exhibit 161 for the limited purpose that I mentioned yesterday, to wit, to show the character of the [fol. 887] defendants.

Mr. Fulton: Show what?

Mr. Kramer: My word was "character."

The Court: I don't know what 161 is.

Mr. Kramer: I am sorry. I have never shown it to you (Handing letter to court).

The Court: Do you want to be heard on this matter?

Mr. Fulton: In connection with that last statement of the character of the defendants, I suspect that under the rules you might impeach the exhibit as such. I would like to ask this gentleman a question or two about it. I haven't talked to him about this letter, either.

Mr. Kramer: All right. Go ahead.

By Mr. Fulton:

Q. This Exhibit 161 which his Honor has and which was in your hands a few minutes ago——

The Court: I would assume the only purpose for which it is offered or intended to be offered is to show that after the Journal had been requested to produce certain records, that they didn't produce such records.

Mr. Kramer: Precisely, and no other purpose. Whether it proves they did it deliberately will have to be developed. [fol. 888] Mr. Fulton: I want to say one thing.

By Mr. Fulton:

Q. This Exhibit 161 wasn't secreted any place, was it?
A. No, sir.

Q. The failure to produce it was just an inadvertence?
A. I am sure it was.

Mr. Fulton: I say that, your Honor, and ask that question for the reason that at that very same session we tried to give and did give data that the motion to produce didn't require necessarily; a lot of contracts that weren't specifically covered. We said, "We will get the information to you and for you",—when they added to the request, in a sense, by oral statements. I simply want to show it is not a willful concealment of that paper writing.

The Court: Well, the exhibit will be received. If the government feels it has no probative value it will not be considered.

Mr. Fulton: I have no objection to its being received in evidence.

Mr. Kramer: Plaintiff's Exhibit 161 is admitted then?

The Court: Yes.

By Mr. Kramer:

Q. Is there now employed by the Lorain Journal any person who was formerly employed by the Lorain Sunday News?

A. I think we have one man in the editorial depart-[fol. 889] ment.

Q. And what is his name?

A. Desbrow.

Q. Spell it please.

A. I believe D-e-s-b-r-o-w.

Q. What is his first name?

A. Leslie, I believe.

Q. Do you know when he was employed by the Sunday News?

A. No, I do not.

Q. I suggest to you James Grills was formerly employed by the Sunday News.

A. I couldn't vouch for that.

Q. So far as you know, he wasn't?

A. So far as I know, he was not.

Q. Do you remember the occasion which was testified to by Mr. Gooris a few days ago and so colorfully yesterday by Mr. Leonard Keller, when the Lorain Journal inserted or had run in the newspaper or in one part of the newspaper for one day a want ad? Do you remember that occasion?

A. Yes, sir.

Q. Now, it is a fact, isn't it, that the Lorain Journal only gets out one edition?

A. That's correct.

Q. Mr. Keller was simply in error when he said they got out more than one, wasn't he?

[fol. 890] Mr. Fulton: Now, if your Honor please——

Mr. Kramer: I am not trying to impeach my own witness. I am trying to get the fact.

Mr. Fulton: I should rather leave to his Honor whether the witness was in error or not.

The Court: Well, you might ask him how many editions there are in the Lorain Journal.

Q. How many editions are there of the Lorain Journal published daily?

A. One edition.

Mr. Kramer: I move to strike my previous question whether or not the witness Keller was in error, if the court please.

Mr. Fulton: I might think it was something else than error.

The Court: I didn't hear that.

Mr. Fulton: I say I might think it was something other than error, and another mind might or might not think the

mistake of the number of editions by that particular witness was.

The Court: I think you- comment offsets the question asked by Mr. Kramer. I will disregard your comment as well as his question. We will start from the beginning.

Q. But it is true that the first two thousand copies of [fol. 891] the Lorain Journal go one place regularly, and then the next 2,000 go another?

A. Not necessarily.

Q. Well, tell me about the times when it is done?

A. Well, it is according to the time we go to press.

Q. By the way, what time do you usually come out on the street?

A. Approximately 2:00 o'clock.

Q. In the afternoon?

A. That's correct.

Q. It is a fact there are three copies of the Lorain Journal all bearing the same date line and each being different with respect to this advertisement. It is true you stopped the press—by "you" I mean someone in the Lorain Journal—and took this ad out when you discovered it; isn't it?

A. I do not recall any such instance.

Q. But you do not deny it; is that it?

A. I do not recall it.

Q. Do you know now whether or not the Lorain Journal ever ran an ad submitted by the Lorain Sunday News or some employee of the Lorain Sunday News in the year 1949, which is the year, I think, was it Mr. Keller testified?

A. I don't remember the occasion.

Q. Well, that wasn't my question. Do you remember during the year 1948 whether or not the Lorain Journal ran a classified advertisement submitted by the Lorain [fol. 892] Sunday News or some employee on its behalf?

A. No, sir.

A. You don't remember.

A. No, sir.

Q. Is it the present policy of the Lorain Journal to accept any advertisement, not offensive and not in bad taste and not appealing to sex, that is submitted by the Lorain Sunday News?

Mr. Fulton: I object to that question.

The Court: What is the objection.

Mr. Fulton: I don't understand it.

The Court: Well, he is excluding from the character of the advertising those that are objectionable, and asking whether or not advertising in the Lorain Sunday News is accepted with the exception of those which are objectionable, characterizing certain classes. Now, what is the objection?

Mr. Fulton: I understand it now. I didn't understand it.

The Court: Well, that is my understanding of it. It was somewhat involved, I agree with you, but that was the question. Is there an objection?

Mr. Fulton: No. I understand the question to be, does it accept advertisements from this paper not otherwise ob-[fol. 893] jectionable.

The Court: That's right.

Mr. Kramer: That's right.

A. I would say that would be determined on presentation of the copy.

The Court: Well, I don't believe that answers the question.

Mr. Kramer: Neither do I, but there is not much I can do about it.

The Court: What is your answer?

The Witness: Well, whether or not we would run the ad or not?

The Court: The question is whether or not you would accept an advertisement from the Lorain Sunday News which would not be objectionable otherwise or because of the character of the advertisement.

The Witness: I think that perhaps we would; I am not sure.

The Court: I don't think that is an answer. I don't believe that answers the question. I would like to have an answer to the question. Let me put it. I would like to have an answer to it: It may or may not be material in deciding the issues in this case.

The Witness: I think that we would run the ad if it was acceptable.

The Court: Don't modify it or circumscribe it. Do you [fol. 894] accept advertising from the Lorain Sunday News which is not objectionable? Let's put it that way.

A. Yes, sir, we would.

Q. Now, do you now recollect any ad that you have knowingly, knowing what you were doing, authorized to be run that was submitted by the Lorain Sunday News: do you now recollect any such ad?

A. Yes.

Q. All right, will you produce in this court, as soon as you can find it a copy of the Lorain Journal containing any ad or ads to which you refer? By the way, do you recollect only one such ad?

A. No, sir, just one.

Q. Just one?

A. I don't recall that incident.

Mr. Kramer: I call upon counsel, in the very short time remaining, to produce that if they can find it.

Mr. Fulton: Find what?

Mr. Kramer: Any copy of the Lorain Journal containing an ad of the Sunday News in it.

The Court: He says he doesn't remember any.

Mr. Kramer: All right, I withdraw the request. Excuse me.

Q. I would like now to turn to a completely differ- [fol. 895] ent subject with the hope that we can save time, Mr. Self. Mr. Self, I might say it is a little pleasanter topic than we have been on.

I'm going to hand you Government's Exhibits 170 to 253, and over the lunch hour I am going to ask you to look through these documents. Don't look through them now. I am going to tell you what the two questions are after lunch. I don't want to spoil your lunch but the more you can do, the quicker we can get through. The two questions I am going to ask you after lunch are as follows: 1. Is it not a fact that these exhibits I have just handed you are to the best of your knowledge photostatic copies of contracts in effect at some time from December 22, 1949 to the present time, between a national advertiser or a national advertising agency and the Lorain Journal Company?

The second question I am going to ask you is whether or not it is not a fact that each of the advertisers and each of the advertising agents mentioned in those exhibits has its principal place of business outside of the State of Ohio?

Do you understand me?

A. I think so.

Mr. Fulton: Now, are those the photostats of contracts attached to the stipulation? If they are, the first question [fol. 896] won't have to be answered at all because we have stipulated their authenticity.

Mr. Kramer: If the court please, the last fourteen, I believe, are not. All but the last fourteen or eighteen are, and I don't have copies of those last fourteen or eighteen because we found them last night.

The Court: Now, I am going to ask counsel, are you going to hand me some eighty or ninety exhibits here that I am supposed to read in chambers?

Mr. Kramer: I don't think it is necessary to read them. They are all exactly the same except for the name of the advertiser and name of the agent, every other provision is the same.

The Court: Well, if it is agreed they are the same, then the court doesn't have to do it. Otherwise if an exhibit is offered, it is offered for some purpose and the purpose of it is to inform the court in respect of some part of this case. I have always been puzzled by counsel's offering a large bundle of documents in evidence.

Mr. Kramer: You mean in this case?

The Court: Not in this case; in other cases as well, with the idea that they are offered in evidence but the court doesn't have to look at them, they have been offered in evidence. Well, if the court doesn't have to look at them there [fol. 897] is no need of offering them in evidence. If they are offered in evidence it is the duty of the court to examine every item of the evidence in connection with the case.

I am going to say this to you very definitely, unless you can come to some stipulation by which you stipulate all these contracts are similar in respect to the matters you expect to prove through them, I am going to compel you to read them as you offer them. Because I went through it in at least two anti-trust cases for months. I don't propose to go through it again. That is the function of counsel and I am going to insist that it be done.

Mr. Fulton: These are different from the contracts we have with our local advertisers, where the contracts are on

our form. There it is very easy to say they are exactly the same. These national advertising contracts are, by and large, and I think almost always, contracts prepared by the national advertiser. It is pretty difficult to stipulate they are all alike, for that reason.

The Court: If it can be stipulated they are similar or alike in certain respect concerning which they are offered in evidence then, of course, it may obviate the necessity of reading them.

Mr. Kramer: We will endeavor to get together over the [fol. 898] noon hour.

The Court: Do you think it would facilitate matters if I gave you additional time for the noon hour to agree on that? If it will be of any help I will adjourn to 2:30 instead of 2:00 o'clock. Will that be of any help to Mr. Self in going over these?

Mr. Fulton: I think it might be.

(Further remarks)

[fols. 899-906] (Adjournment taken to 2:30 P.M. same day)

* * * * * * *

Further Examination of D. P. Self.

By Mr. Kramer:

Q. Mr. Self, I hand you Government's Exhibits 170 through 253, inclusive, and I ask you to read each of them aloud, and in each case the number of the exhibit, the name and address of the advertising agency, the name of the advertiser and the effective date of the contract.

A. Exhibit 170, The American Tobacco Company, Shannon & Associates, 28 West 44th Street, New York 18, New York.

Q. Effective date?

A. June 7, 1949.

Mr. Fulton: Before we come to the next one, may I have [fol. 907] the last question read?

(Question read.)

Mr. Fulton: I object and I will move the answer be stricken, on the ground there should not be any reference

made to the contents of the documents until they have been received in evidence.

The Court: Do you contend that the mere fact that it is shown that the Lorain Journal is engaged in interstate commerce, assuming that this proves interstate commerce——

Mr. Kramer: Assuming that.

The Court: —has any probative value in proving the violation charged in this complaint?

Mr. Kramer: I do, sir. My position is this is a part of the commerce among the several states that the Lorain Journal Company has attempted to monopolize and that its officers and agents have conspired——

The Court: On the charge of attempted monopolization?

Mr. Kramer: And conspiracy to monopolize.

The Court: All right. Well, the objection will be over-[fol. 908] ruled. These documents will be received and exceptions may be noted.

As I have said, if I reach the conclusion that they have no probative value, I will strike them out.

Mr. Kramer: That means, then, that the documents 170 to 253, both inclusive, are now received?

The Court: Over objection.

Mr. Kramer: I would like to say the sole reason I am having them read is because as I understand your Honor's instructions, if we do this it will not be necessary for your Honor to read the contents.

The Court: Well, I hope it will not be necessary. If it cannot be eliminated I will have to go through them.

I have expressed the hope to counsel for both sides if it is at all possible that counsel may agree as to the contents of these documents. Whether or not they are admissible is a matter for the Court to decide. Or whether or not, even though admissible, they prove the points urged.

[fol. 909] Now, I am not saying they prove the proposition you are urging for them. All I am doing is saying to you I will receive them in evidence as possibly tending to prove that.

Mr. Kramer: I understand that.

The Court: The attempt to monopolize.

Mr. Kramer: That was my understanding, your Honor.

The only reason I am having him read these off is that it is my thought you will not have to read them.

The Court: Well, let's forget about that phase of it. If that is the only way in which it can be done, offer them. I understand they are all contracts between national advertisers and the Lorain Journal and that in each instance it is a contract between either an advertising agency and the Lorain Journal or between the manufacturer or distributor and the Lorain Journal; and that in each instance the manufacturer or the advertiser, the national advertiser, is a resident outside the State of Ohio.

Mr. Fulton: That is correct.

The Court: Now, I don't know whether you can agree on that or not.

[fol. 910] Mr. Fulton: Oh, yes, we can agree on that. That is part of this stipulation.

The Court: If you can agree on that—how many are there?

Mr. Kramer: We have offered 84.

Mr. Fulton: Of course if you are going down through each one in addition to what you elicited about the one, 170, I think it might be well to elicit a sentence at least on the subject matter of the advertising, that is all. That would save reading it.

The Court: Well, that is all right. I will have to go through those anyway. I see it is impossible.

Mr. Krāmer: I want to say to your Honor when the time comes we are going to cite to you authority which in our opinion is influential, certainly not binding, on this precise point in reaching a decision.

The Court: I am supposed to decide whether or not the refusal or the fact that they are publishing advertisements of national advertisers would tend to prove an attempt to monopolize?

Mr. Kramer: Oh, no. I always distinguish between the [fol. 911] substantive offense and the character of the commerce that has been offended against. I think you have two separate questions. One is, did they monopolize anything? If they did, what part of interstate commerce would they monopolize? I am going to the question, particularly, I am going to the authority that national advertising in newspapers constitutes commerce among several states. I think

the other part goes to the very heart of our position and will be fully briefed.

The Court: Is each one of these contracts connected separately with testimony to the effect that they refused to accept this advertising if they advertised over WEOL?

Mr. Kramer: No, your Honor. My position is going to be that by desiring to be, by planning to be and by being, the principal medium for advertising in Lorain they have gathered unto themselves all this business.

The Court: Well, I will receive these exhibits, as I have stated, with the reservation that if in your brief you can show me that under the law that tends to prove an attempt [fol. 912] to monopolize, that they will be accepted as evidence of that. But it will be received with that reservation, they will be received with that reservation.

Mr. Kramer: Your Honor's statement has been very helpful because I now see what lies ahead of us by way of argument on this point.

The Court: Well, I think a lot of things lie ahead of both sides on many points.

Mr. Kramer: That's right.

I think before the day is over I will be able to cite to your Honor one case which has just come down which I haven't read yet but I have been told about by my superiors in Washington, a case in New Mexico which I have not been able to locate here.

The Court: A Supreme Court case?

Mr. Kramer: Supreme Court of New Mexico, not a Federal Court. I might say it arose out of an attempt to tax receipts for national advertising.

The Court: It is rather unusual, isn't it, to cite an authority from the State of New Mexico in a Sherman anti-trust case?

[fol. 913] Mr. Kramer: If the Court please, there are two questions: first, is this commerce among the several states; and, second, has it been so accepted.

The Court: I fully understand but as to the authority being cited, coming from New Mexico, defining the term of what is or is not interstate commerce, at most it can only be helpful to the Court, and certainly the Court isn't bound to follow it.

Mr. Kramer: Of course not.

The Court: It may be persuasive and it may not be.

Mr. Kramer: I say this with all humility, outside of the opinions of the Supreme Court and the Sixth Circuit Court of Appeals I try only to cite authorities which could be persuasive on the particular point, and not for any other purpose.

As I understand, Government's Exhibits 170 to 253 have been admitted in evidence for what weight they have.

The Court: They will be received with the limitation that they will be tied in to show that they constitute evidence [fol. 914] of probative value to show the attempt to monopolize interstate commerce. For that purpose.

Mr. Kramer: And the conspiracy to monopolize.
The Court: And the conspiracy to monopolize.

Q. Would you please describe to the Court very briefly what difference between national advertising contracts and local advertising contracts is?
[fol. 915] A. The difference in the contract?
Q. Well, national advertising contracts are made with persons engaged in doing business nationally, is that it, and local advertising contracts are made with local merchants in Lorain in the case of the Lorain Journal, is that right?
A. That's about right.
Q. Customarily is the copy to be printed pursuant to national advertising contracts to which the Lorain Journal Company is a party sent to you by the national advertiser or by the advertiser's agency?
A. Usually by the advertising agency.
Q. Is it sent by mail, the advertising copy, is it sent by mail?
A. Usually.
Q. Is the Lorain Journal customarily paid by check for services rendered pursuant to these contracts?
A. Yes.
Q. And the checks are sent to you by mail, are they, customarily?
A. Yes.

Mr. Kramer: Exhibit 254, of the court please, Plaintiff's Exhibit 254, is tabular data requested in the subpoena referred to yesterday from the Lorain Journal Company and shows income from the following advertising classifications and income from circulation during the calendar

[fol. 916] year 1949, and I understand that counsel will stipulate that the document is authentic and accurate.

Mr. Fulton: We do stipulate, and we will object to the receipt of that exhibit in evidence.

Mr. Kramer: Exhibit 255 shows the amount paid by the Lorain Journal Company for newsprint in the calendar year 1949, as well as the amount of newsprint consumed. I would like to hand to the Court copy of these two exhibits.

The Court: What is the objection, Mr. Fulton?

Mr. Fulton: The objection is the same objection made to the receipt of the large group of exhibits, the national advertising contracts.

The Court: It certainly can't be applicable to the newsprint, can it, the same objection?

Mr. Fulton: Well, part of it is the same. In other words, I think it isn't material to show whether we are engaged in interstate commerce or not. We are being charged with doing things which—

The Court: In restraint of interstate commerce, and you are charged with conspiracy and attempts to monopolize.

Mr. Fulton: That's right, and moreover I think the fact that things which we use in our business to publish our news-
[fol. 917] paper, for advertising purposes, among other things, that come from other states than Ohio, such as newsprint or even machinery, can't tend to prove we are engaged in interstate commerce.

The Court: I will receive both of these with the same reservation I have made with respect to the other exhibits.

Mr. Kramer: Exhibits 254 and 255, then, have been admitted in evidence subject to the reservation that your Honor made respecting the national advertising contracts of the Lorain Journal Company.

The Court: That's right.

Q. Mr. Self, I hand you Government's Exhibit 255 and I ask you to tell me whether the newsprint paper you bought from the Western Newspaper Union was bought pursuant to a written contract or not?

A. No, sir.

Q. It was not?

A. No, sir.

Mr. Kramer: Does your Honor wish these read?

The Court: No.

A. Mr. Kramer, could I add to that?
Q. Yes, certainly.
A. Not to my knowledge.
Q. Not to your knowledge?
[fol. 918] A. No.
Q. Mr. Self, I show you Government's Exhibits 124 to 128, and I ask you to tell me whether or not the syndicated columns, features and comics contracted for in those exhibits by the Lorain Journal Company are not sent to the Lorain Journal Company from points outside the State of Ohio? Do you want to look at them?

Mr. Fulton: Let the record show an objection to that on the same ground as stated before.

The Court: That goes even farther than the other. I am just wondering what difference it makes. Suppose they are. What difference does it make?

Mr. Kramer: If your Honor please, I would like to explain at some length what difference it makes.

The Court: I'll be glad to hear from you.

Mr. Kramer: I am suggesting that if a newspaper by design plans to be and is the only newspaper in an area, a separate trading area, then the fact that it uses the channels of interstate commerce to get materials of importance to print that newspaper on or in or with constitutes a monopolization of that interstate commerce upon which it relies.

The Court: The fact that it gets its comics out of the [fol. 919] state?

Mr. Kramer: It is preventing others from using those channels of commerce, it is restraining and monopolizing. Of course, I propose to brief this in full at the conclusion of the case, if the court please.

The Court: I will be glad to hear what you have to say in your brief on it. I will receive it again with the same reservation.

A. In the case of No. 128, the McNaughton Syndicate, that's a syndicate that I believe is in New York, and we receive a daily panel "This Funny World." I don't know where it is shipped from.

Q. The witness said he doesn't know. Now, returning to the subject which we were on before we got into national advertising, have you remembered any occasion when the

Lorain Journal printed an advertisement of the Lorain Sunday News since your answer to the question before lunch when you said you didn't remember any such occasion?

A. Would you repeat that question?

(Question read by reporter)

A. I don't recall one now.

Q. Have you been able to find the letter which Mr. Fay testified he wrote in 1945 or 1946 to Stone Grill?

A. No, I was unable to find it.

Q. But you did make a search for it?

[fol. 920] A. I did.

Q. Now I show you Government's Exhibits for identification 164, 165, 166, 167, and 168, and I will ask you whether or not each of those is not a photostatic copy of a carbon copy of a letter that you wrote to advertisers in the Lorain Journal cancelling their advertising contracts?

A. Yes, sir.

Q. I didn't hear your answer, sir.

A. Yes, sir.

Mr. Kramer: Your Honor has them. Would you like me to read them?

The Court: I don't believe it is necessary. You can tell me who they are.

Mr. Kramer: Mr. Ted Jacobs, Robinson the Dry Cleaner, Mr. N. M. Stanberger, Launder 'Em, Lorain, Ohio, Mr. H. D. Murphy, Lake Erie Oil Company. I might say, your Honor, Mr. Murphy was to be a witness and couldn't come. Mr. Dominic Richi, Rich's Tavern, Amherst, Ohio, and Mr. I. H. Sperry, Glad's Self Service Shoe Store, Inc., Lorain, Ohio.

Q. Now, at the time you wrote each of these letters, Exhibits 164 to 168 inclusive, was it your understanding that the persons to whom you addressed each of those letters was advertising over radio station WEOL?

A. It was my understanding that they either were or [fol. 921] would start.

Q. To so advertise?

A. That's right.

Mr. Kramer: I offer in evidence, if the court please, Government's Exhibits 164 through 168.

The Court: They may be received.

Q. Did you sit in court and hear the testimony of the following people: Mr. Tebbel?

A. Yes, sir.

Q. Did you hear Mr. Holbrook testify?

A. Yes, sir.

Q. Mr. Brochu?

A. Yes, sir.

Q. Did you hear Mr. Heisner's testimony?

A. Yes, sir.

Q. Mr. Kohlmyer's testimony?

A. Yes, sir.

Q. Mr. McConnell's testimony?

A. Yes, sir.

Q. Mrs. Stevens?

A. Yes, sir.

Q. And Mr. Resar?

A. Yes, sir.

Q. Mr. Dinn?

A. Yes, sir.

[fol. 922] Q. And Mr. D'Andrea?

A. Yes, sir.

Q. I think you will find that the record shows that each of those persons received a letter from you cancelling his or her advertising contract with the Lorain Journal Company. At the time you wrote those letters to the ten people whose names I have just read off, was it your understanding that they were or were about to advertise on radio station WEOL?

A. Yes, sir.

Q. Now, I ask you once again, sir, was it at the time you wrote these letters the policy of the Lorain Journal to decline to print in the Journal advertisements by those merchants in Lorain who advertised over station WEOL?

A. It was in accordance with an agreement we had with them.

Q. Whom do you mean by "them" in your answer to the question?

A. The specific advertisers.

Q. Was that agreement oral or written?

A. Oral.

Q. Please state the terms of the oral agreement in each case, and if they were all the same, just state one.

A. That they would try the facilities of the Elyria radio station, during which time they would withdraw their advertising from the Journal.

Q. And as I understand it, Mr. Self, it is your posi-[fol. 923] tion that you on behalf of the Lorain Journal—and you correct me if I am mistaken—entered into oral agreements with each of the ten persons whose names I have read, pursuant to which they agreed that you should or could or would cancel their newspaper advertising contracts while they advertised on the air; is that right?

A. It was not necessarily an agreement on their part.

Q. Oh, it wasn't necessarily an agreement. Would it be fair to say what you meant was you told them that's what you were going to do, that's what they could expect you to do?

A. I would rather say, it was an understanding.

Q. Well, it was an understanding between whom?

A. Between the advertiser and the Journal.

Q. Let's see if we can't make the terms of the understanding a little more plain. Was the term of the understanding that they should advertise over station WEOL for a definite period in order to find out if they wanted to continue to advertise over WEOL, or was it that if they proposed to advertise over WEOL they should give it an exclusive try?

A. The understanding was that they would try the facilities of the Elyria station.

Q. Did you encourage them to advertise over the radio station WEOL?

[fol. 924] A. We told them that was their business.

Q. You neither encouraged nor discouraged; is that your position?

A. If they wanted to try it, we encouraged them to try it.

Q. And what steps did you take to encourage anyone whose name you now remember, to advertise over radio station WEOL?

A. I don't know that we would encourage them unless they wanted to.

Q. You didn't encourage them, then?

A. Not unless they wanted to.

Q. Well, do you remember anybody by name whom you encouraged? For example, did you encourage Mr. Rusine, who testified this morning? Did you encourage him to advertise over WEOL?

A. I never discussed his advertising on WEOL.

Q. Did you encourage the Kroeger Company to advertise over WEOL?

A. I did not.

Q. Did you encourage H. H. Holbrook to advertise over WEOL?

A. No. He decided it for himself.

Q. Can you remember the names now of any Lorain Journal advertisers whom you encouraged to advertise over WEOL?

A. We didn't go to anyone and suggest that they advertise over WEOL.

Mr. Kramer: Read the question, please.

[fol. 925] (Question read by reporter)

A. Only in the manner mentioned, where they suggested that they would like to try it, and we told them to go ahead and try it.

Q. Well, we'll proceed.

Mr. Fulton: If your Honor please, although I realize this is cross examination, with much greater latitude than on direct event about questions that might appear to be argumentative or asking for conclusions, I ask that there be stricken from the record and the court not consider any of those questions or answers to the questions in which the word "encourage" "encouragement" was used, because it does call from this witness for answers by way of conclusions not factual, not evidential, perhaps with one definition in the mind of the recipient of the question, another definition in the mind of the interrogator.

The Court: Well, of course, it's almost impossible, Mr. Fulton, to find any word in the English language which may not have different shades of meaning in the minds of different individuals, unless you name a certain object. If you name a certain object, of course, you have the picture of the object before you. It's exactly the same as word "competition." "Encourage" may mean one thing to the witness and something else to the questioner. Yet, at the same [fol. 926] time, if he does have any reservation in his own mind as to what it means, he is at liberty to explain it. I think that he has clarified the situation quite clearly when he said, "we didn't tell them to go ahead and advertise, if

they wanted to do it we told them to go ahead and try it.'' That's his answer.

(Discussion had)

The Court: The court understands what he meant by it. There is no misunderstanding in the court's mind as to what he meant by it.

Mr. Kramer: All right, your Honor.

Q. Did you tell any Lorain Journal advertiser that they could not continue to advertise in the newspaper if they advertised over WEOL?

A. Would you repeat that, please?

(Question read by Reporter)

A. We told some that during the time that they used WEOL we would prefer that they withdraw their advertising from the Journal until such time as they could make a complete test of its ability to serve as an advertising medium for them.

Mr. Kramer: If the court please, I would like the court to instruct the witness to answer the question.

The Court: You may put the question again. That may [fol. 927] be answered quite definitely, Mr. Self, without any provisos or conditions that circumscribe it.

A. With provisions we did tell some of them—

The Court: No, the question is asked quite definitely and directly. Read the question, please.

(Question read by Reporter).

The Court: That's a direct question that can be answered directly.

A. We did.

Q. Please name the advertisers whom you now recall to whom you made that statement or those statements.

A. Do you want me to name the advertisers that we told that to?

Q. Yes.

A. I don't recall them.

Q. I hand you Government's Exhibit 169 and ask you to tell me if that isn't a photostatic copy of a letter that you wrote, that contains your signature?

A. Yes, sir.

Mr. Kramer: Counsel has not seen this letter, and I want him to look at it.

Mr. Fulton: What is the exhibit number?

Mr. Kramer: It's Exhibit 169. If the court please, this is a letter from D. P. Self to McCann-Erickson, Inc., Cleve-[fol. 928] land 14, Ohio. I offer the letter in evidence. Does your Honor wish to see it?

The Court: Yes.

(Thereupon Mr. Kramer handed Exhibit 169 to the court).

The Court: It may be received.

Q. Now, Mr. Self, this letter is dated August 5, 1949 and it says: "Gentlemen: Effective immediately we will not accept for publication any advertising for The Standard Oil Company." Which Standard Oil Company did you mean? May I suggest it to you to refresh your recollection?

A. Yes.

Q. Wasn't it the Standard Oil Company of Ohio?

A. I judge so, if that is the one that operates in Lorain.

Q. And do you remember the circumstances that preceded your sending this letter out?

A. Yes.

Q. Would you please state them to the court as briefly as you can?

A. We received information that they were going on the radio station in Elyria, and we sent that notice to them.

Q. After you received information that the Standard Oil Company was going on the radio station in Elyria you sent Government's Exhibit 169. Do you know whether or not they did go on the radio station?

A. I do not.

Q. Does the Standard Oil Company of Ohio now have a [fol. 929] contract for advertising in the Lorain Journal?

A. No, sir.

Q. Do they advertise in the Lorain Journal at the present time?

A. Not right now.

Q. Did any of these advertisers whose names you do not remember, but whom you do recall having told they could

not advertise—or whom you testified you recall you told they could not advertise in both at the same time, tell you that they wanted to advertise in both at the same time, the radio station and the newspaper?

A. Yes, sir.

Mr. Kramer: No further examination of Mr. Self by the government in its case in chief, if the court please, unless the court has some questions.

The Court: I would like to know what information was obtained that the Standard Oil was going to use the radio for advertising purposes. How did you learn that the Standard Oil Company was going to use WEOL for advertising purposes?

The Witness: One of their salesmen brought in the information.

Q. Do you know what his name was.

A. I don't recall it at this moment.

The Court: Do you know what type of advertising it [fol. 930] was? Was it one of these national radio hook-ups for the Standard Oil Company?

The Witness: The Elyria station doesn't belong to a national hook-up.

The Court: It was not a national hook-up?

The Witness: No, sir.

The Court: But you did have information, you say, from one of your salesmen?

The Witness: Yes, sir.

The Court: But Standard Oil of Ohio was to engage in radio advertising?

The Witness: That is correct.

The Court: That was what prompted the writing of this letter.

The Witness: That is correct.

Mr. Kramer: No further questions at this time, if the court please.

Mr. Fulton: No questions of this witness at this [fols. 931-945] time.

* * * * * * *

SAMUEL A. HORVITZ, called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

Direct Examination of Samuel A. Horvitz.

By Mr. Fulton:

Q. State your full name, please.
[fol. 946] A. S. A. Horvitz.
Q. Where do you live, Mr. Horvitz?
A. My home address is 16700 Parkland Drive, Shaker Heights, Ohio.
Q. May I inquire what your occupation is, or what your occupations are?
A. Contractor, real estate, publisher of the Lorain Journal and Mansfield News Journal.
Q. How long have you been a publisher of the two papers, the one in Mansfield, and the Lorain Journal, the one involved here?
A. Oh, many years. I don't know the exact date.
Q. In a general way, what are your duties as publisher of the Lorain Journal?
A. I am in charge of the operations of the Lorain Journal and formulate the policies of that paper.
Q. And when you refer to formulation of policies, what policies do you refer to?
A. All policies with reference to the business and the editorial part of the paper.
Q. Does that include also the policy of the paper with respect to advertising?
A. Yes.
The Court: You say that includes editorial policy of the paper?
[fol. 947] The Witness: Yes, sir.
Q. Now, Mr. Horvitz, I would like to take this first somewhat historically. The Government's case referred to certain events and things in connection with the acquisition of the Lorain Journal in Lorain and the acquisition was from what is known as the Brush-Moore transaction. Am I right about that?
A. Yes.
Q. Will you please tell the Court in a general way what

led up to the acquisition of that paper and the negotiations which led up to it?

A. Carmi Thompson, an attorney in the Terminal Building, whom I had known for many years, called me and said he would like to see me. I said I would come to his office or he could come to mine. He said he would appreciate it if I could go to his office. I went to his office. He said that he was a stockholder and a director in Brush-Moore Newspapers, Inc., which corporation owned newspapers in Canton, East Liverpool, Salem, Marion, Portsmouth, Steubenville, and an interest in the Ironton paper. He said that Louis Brush, Roy Moore and W. H. Vodrey had on their own purchased from R. C. Hoyles the Times Herald at Lorain and the Mansfield News. That purchase was made in December of 1930. He said that they were losing a lot of money, and that no doubt we were losing a lot of money. He said it was an economic waste, and it was bet-
[fol. 948] ter—

The Court: What do you mean "we were losing money"? Who is we?

Q. Whom do you mean by "we"?

A. We, the Lorain Journal and the Mansfield Journal. He said it was not only an economic waste, but that where two papers were in a town of that size—

Mr. Kramer: I object to that. I assume all of this is going in to show the state of mind of the defendant and not to show the conversation between these parties.

The Court: I'm wondering what bearing it has.

Mr. Fulton: If your Honor please, I am offering it for a two-fold purpose, the purpose Mr. Kramer mentioned, to show the state of mind of the defendant, and to show what led up to this so-called agreement on which great emphasis was placed by the Government. Your Honor remembers that it was agreed by the newspapers not to engage in the newspaper business in certain territories during a certain period of time. It's for that purpose, and to show the state of mind.

The Court: Well, what state of mind?

[fol. 949] Mr. Fulton: He is charged with being a conspirator.

The Court: Evidently you feel that state of mind has

something to do with it. What bearing does state of mind have on an antitrust violation?

Mr. Fulton: To the extent that he is charged with being a conspirator with the paper and with his fellow officers.

Mr. Kramer: That isn't what I had in mind, I'm sorry. I assumed that sooner or later Mr. Horvitz was going to tell what he said, and it was my thought that this conversation was considered necessary to understand what he said, that you couldn't understand what he said unless you heard what was said to him.

Mr. Fulton: This is pretty much preliminary to two things on which emphasis was placed, three things, in fact, where emphasis was placed in the examination by the Government in its presentation of the case, going into the history as to the acquisition of this paper. One was the covenant not to engage for a certain length of time or in certain places. Second, emphasis was placed on another thing, [fol. 950] namely, that one contract appeared to place him in a position as an individual of making this purchase, and that was connected immediately with the third factor of a guarantee, which does require some explanation here.

The Court: All right.

A. He also stated it was harmful to the two communities, instead of the newspapers fighting for the benefit of the communities they were spending most of their time fighting each other, and that the trend was in certain communities to have only one newspaper in certain fields. He asked me if we would be willing to either buy or sell both papers to Brush-Moore—no, he first asked me if we would be willing to sell both papers to Brush-Moore or exchange one paper for the other.

Q. By exchange one paper for the other—

The Court: Let me understand this. Is this conversation taking place, or has it taken place after the Horvitzes had acquired an interest in the Mansfield paper?

Mr. Fulton: No, these were negotiations leading up to that.

The Court: Then I don't understand what he means [fol. 951] by "we would be willing to sell or buy."

The Witness: By "we" I'm referring to Lorain Journal.

The Court: Had you acquired the Lorain Journal before this?

The Witness: The Lorain Journal was in existence and the Mansfield Journal was in existence.

The Court: When you say "we would be willing to sell" I don't understand. As I gathered, the question was how the acquisition of the Mansfield paper and the Lorain Journal took place by the Horvitz interests.

Mr. Fulton: And how the Lorain Journal acquired—

The Court: Now he says "whether we would be willing to sell."

Mr. Fulton: And how the Lorain Journal acquired this other paper in Lorain.

The Court: Well, was he interested in that at the time?

Q. You were interested in the exchange of the Lorain Journal with and for the other paper in Lorain, were you not, known as the Herald Times?

A. We were interested—

[fol. 952] Q. By "we" you mean who?

A. By "we" I mean the corporation, The Lorain Journal Company and the Mansfield Journal Company owning the Mansfield Journal and the Lorain Journal, the two separate corporations owned those two properties.

Q. In order to get this crystallized and through as quickly as possible, you may have the originals with you, in connection with that transaction the Government offered in evidence Exhibits 135, 136, 137, 138 and 139. Do you have the originals with you?

The Court: These exhibits aren't marked, are they?

Mr. Kramer: Yes, your Honor. Photostats were made from the original exhibits.

The Court: I mean the exhibit numbers aren't marked on the photostats?

Mr. Kramer: Yes, your Honor, they are.

Q. Those are Exhibits 135, 136, 137, 138 and 139.

[fol. 953] A. That's right.

Q. By reference to Exhibit 135 you can explain the question that was in his Honor's mind when you referred to "we." Does this Exhibit 135 relate to the matter of buy or sell or exchange?

A. Yes, it does.

Q. Now, prior to the time that that agreement was entered into, you had the discussion you just related?

A. The discussion I had was a part of the discussion. That that I related was a part of the discussion I had prior to this contract.

Q. Now, I want to call your attention to the signatures to that contract Exhibit 135, bearing in mind that the prefatory statement on the first page of the contract says: "This contract between Louis H. Brush, Roy D. Moore, William D. Vodrey, and Samuel A. Horvitz." Now, those who signed in handwriting were yourself and Mr. Vodrey?

A. Yes.

Q. Mr. Vodrey signed for whom?

A. For Louis H. Brush, Roy D. Moore, William D. Vodrey; he signed for them.

Q. You signed—

A. I signed on behalf of the Lorain Journal and the Mansfield Journal.

Q. And did Mr. Vodrey sign on behalf of any newspaper as well as those individuals?

A. He signed on behalf of the Lorain Times-Herald and [fol. 954] the Mansfield News, and on behalf of the corporations that owned those two papers.

Q. Now, that was a preliminary contract which led up finally to, I will say your, the Lorain Journal, acquiring the newspaper in Lorain, or the Times-Herald?

A. That's right.

Q. And the paper in Mansfield, is that right?

A. Yes.

Q. Now, the next document that was signed in connection with that transaction was Exhibit 136?

A. 137 was the next document that was signed, not 136.

The Court: I just wonder as to the weight of this testimony. These documents speak for themselves. The documents are written documents?

Mr. Fulton: They are.

Q. What was the next document signed?

A. The next document signed is what has been marked Government's Exhibit 137, contract between the Lorain Times-Herald Company, News Printing Company, Louis H. Brush, Roy D. Moore, William Vodrey, and the Mansfield

Journal Company; and the Lorain Journal and S. A. Horvitz.

Q. Now, that contract, on the reverse side, was signed by you in how many places?

A. What do you mean by "reverse side"?

Q. On the last page.

A. On the last page it was signed by the Lorain Times-[fol. 955] Herald, by Louis H. Brush, President, William D. Vodrey, Secretary; the News Printing Company by Louis H. Brush, President, and William D. Vodrey, Secretary; and by Louis H. Brush, Roy D. Moore, and William D. Vodrey. The Lorain Journal by S. A. Horvitz, President, I. Horvitz, Secretary, Mansfield Journal Company by S. A. Horvitz, President, I. Horvitz, Secretary; and S. A. Horvitz.

Q. Now, the next document in the series signed in connection with the transaction is the document 136?

A. Yes.

The Court: 136 is the last one?

The Witness: That was signed after.

Q. The next one in the series of transactions. The Government has them marked in different order than the order of sequence.

A. Both bear the same date.

Q. Will you tell us what brought about the document 136; that is, the document that contains the covenant about subsequent operations and the use of names?

A. I don't understand your question.

Q. What brought about the execution of Exhibit 136, which is supplemental to these other agreements?

A. That was done after the document which is marked 137 was signed.

Q. What brought about that understanding?

A. Well, it was through conference that we had there [fol. 956] that this was brought about.

Q. Between whom and whom?

A. Between the Lorain Times-Herald, signed by Louis H. Brush, President, William D. Vodrey, Secretary; the News Printing Company by Louis H. Brush, President, William D. Vodrey, Secretary; Roy D. Moore, and William D. Vodrey. The Lorain Journal Company by S. A. Horvitz, President, I. Horvitz, Secretary; the Mansfield Journal

Company by S. A. Horvitz, President, I. Horvitz, Secretary; and S. A. Horvitz.

Q. Now, that is the contract that contains this agreement about continuance of the operation of the newspapers thereafter; is that right?

A. I don't understand.

Q. In the paragraph marked "First" on page 1 of Exhibit 136?

A. Yes.

Q. "It is contemplated that purchaser shall have the exclusive right to have the name of the newspaper purchased; that after such purchase, separate publication of the newspaper purchased shall be discontinued, but the name of the purchased paper may be used by the purchaser in such connection with the purchaser's name as may be desired, for the purpose of preserving the exclusive right to the use of the name of the purchased paper under the trade-mark and copyright laws." What brought about that contract with [fol. 957] that covenant to supplement the other contracts?

A. Because they submitted to us two forms of contract. One was where Brush and Moore was to buy the Lorain Journal and the Mansfield Journal; the other one was where we were to buy, we, the Lorain Journal, and the Mansfield Journal, was to buy the Lorain Times-Herald and the Mansfield News. We were given the option to exercise as to whether we bought or sold on the same terms and conditions as shown in the contract dated December 5th. They prepared the contract which is dated December 17th, that was filled in in pen and ink, and then we exercised the option to purchase those two papers, and after that there was a supplemental agreement which is marked 136, dated the same date, 17th day of December, that was prepared there.

Q. Now, in one of these agreements there was a covenant not to continue, the vendor agreed not to continue with the operation of publishing of a newspaper in either of the two counties Lorain and Richland. Which one is that?

A. That was in the agreement of December 5th that was prepared by Brush and Moore's attorneys, and when I first saw that I asked them why it was necessary. They said that that was the practice in buying papers in towns of that kind, that if they didn't insert that provision there would be nothing to stop us from starting another paper in the city

[fol. 958] within a short time after the sale was made. They were the ones who prepared the contract of December 5th and inserted that provision in there.

Mr. Kramer: I object and ask that all the conversation as to what these gentlemen proposed be stricken.

The Court: Sustained.

Q. That covenant to which I referred is contained in Exhibit 137, is it not?

A. Yes.

Q. The agreement of the 17th day of December, 1931?

A. Yes.

Q. And that is the contract that provided for either the purchase or sale by either party or the exchange, as referred to, of newspapers in the respective cities?

A. There were two sets of contracts. One was for us to buy and the other was for us to sell. This contract, 137, is the contract we signed exercising the right to buy. And the contracts were prepared by Brush-Moore and not by us.

Q. Now, reference was made, particularly in the course of these contracts, and I want you to explain this Exhibit 113, and some emphasis placed on the guaranty. You have the original, but I will show you that photostatic copy.

A. Yes.

Q. Now, in the purchase of the papers there were some notes executed for the purchase price, were there [fol. 959] not?

A. Yes, sir.

Q. Now, in order that the court will understand, without reading that whole document, and the document speaks for itself, that guaranty agreement has nothing whatever to do with the guaranty of the purchase price represented by such notes to be secured by a trust indenture, does it?

A. No.

Q. That guaranty is limited to certain specific items. What are they?

A. The Mansfield Journal Company to Mergenthaler Linotype Company $3550; Lorain Journal Company to Duplex Printing Company, $15400; Lorain Journal to Ludlow-Typograph Co., $1004.

Mr. Kramer: May the record show he was reading from Exhibit 138?

Mr. Fulton: 138, that's right.

Q. You have said that had nothing to do, that guaranty, with the obligation on your part to pay any unpaid purchase price represented by any notes given for such unpaid purchase price. May I ask you, did you sign any such notes?

A. Only as officer of the corporation. I have the original notes here; if you care to see them I will produce them.

Q. And those were signed by the corporation. Do you have them?

[fol. 960] A. I will get them. (Witness searches for same)

Q. Now, it may be they will make no particular point about it. I wanted the notes available for these gentlemen to see.

A. I have them here.

Q. Well, I will tell you what I will do, Mr. Horvitz, to save time. If they want to see the notes I will produce them later. Forget the notes for the moment. I think you remember what they were. How many such notes were there?

A. There were eight notes each for $100,000.

Q. And those notes represented the balance of the purchase price?

A. The total purchase price.

Q. And those notes were secured by a trust indenture?

A. Yes.

Q. And the obligor on the trust indenture was the Lorain Journal?

A. The Lorain Journal Company and Mansfield Journal Company.

Q. Were you an obligor on the trust indenture?

A. No, sir.

Q. Were you an obligor on the eight notes of $100,000 each?

A. No, sir.

Q. Did you sign any one or all of those eight notes?

A. As an officer of the corporation only.

Q. Have those notes been fully paid?

[fol. 961] A. Yes.

Q. You do have them here available for the government to look at if they want to?

A. Yes, I do. They may have been left in the office. They are important papers and they may be in the office. I had them as late as Saturday, and I will have them right after lunch.

Q. I will show another exhibit that the government offered in connection with this general proposition I am interrogating you about, Exhibit 139, minutes of the special meeting of the directors of the Lorain Journal; and I will call your attention particularly to this one statement: "The contract with proprietors of the Lorain Times-Herald to refrain from competing or entering into any competitive newspaper enterprise in the territory of the Lorain Journal Company for a period of five years from December 17, 1932." Now, that much refers to the provision in the contract about refraining from publishing?

A. Only to a certain extent. I can explain to you how that came about, if you give me an opportunity.

Q. I am going to give you an opportunity in a moment. This grew out of the provision in the contract?

A. Partly.

Q. Will you explain the allocation of that amount, $232,-932.62 to that item for that purpose as shown by Exhibit 139?

A. Under the agreement whereby the Lorain Journal [fol. 962] Company and the Mansfield Journal Company purchased the Lorain Times-Herald and the Mansfield News, the total purchase price was $800,000. The contract between the two parties, and by that I mean Brush-Moore and our company, specified that $300,000 of that purchase price would be allocated to the Lorain Journal and $500,000 to the Mansfield property. After the contract was made, the deal consummated, we then had auditors go over the books to set up on the books of the Lorain Journal the proper entry in order to meet the requirements of the contract. So an inventory was made of the physical assets, and the physical assets only amounted to a matter of about less than $70,000. The question was then raised as to whether or not the other $230,000 should be considered good will. After the auditors went into the matter they said, no, that would have to be allocated, that balance, for the non-competitive provision contained in the contract; and the auditors set it up that way, and the Internal Revenue Department so recognized it.

Q. Now, coming to another subject matter, and that is the, I will call it, the wire service contracts with the United Press and the I.N.S., who had charge on behalf of the newspaper, the Lorain Journal, who had charge of their end of

the negotiations which led up to the contract 121 with the United Press Association? Do you have a copy of that or [fol. 963] the original in your file?

A. I have the original. Wait a minute. May I see that?

Q. 121?

A. That is not marked. I want to see which date that is. This is '37. There was one before that, 1933.

Q. The other one is not in evidence.

A. I conducted the negotiations covering the original contract of 1933 and this contract.

Q. The original contract of '33 was prior to, of course, this contract Exhibit 121?

A. Yes.

Q. And similar in type; is that right?

A. Yes, sir.

Q. Who negotiated those contracts for the other side, the United Press?

A. A representative, Hugh Bailey, who was the President of the United Press, originally handled the matter. Then he sent in one of their men, I don't remember now whether Ed Williams, I think it was Ed Williams, to negotiate for this contract.

Q. This contract, Exhibit 121, and the prior contract, are on the regular form of the United Press Association?

A. They are on the regular form, printed form of contract.

Q. Let me show you another wire service contract. I think it is with the I.N.S., in the name of King Features, Incorporated, Exhibit 122. Do you have the original of that in your [fol. 964] file?

A. Let me see the exhibit. It is not marked. Yes, I have the original.

Q. Who on behalf of the Lorain Journal negotiated that contract with King Features?

A. I did.

Q. Who on behalf of King Features negotiated the contract?

A. Their representative, a fellow by the name of Ed Stevens.

Q. That contract is on whose form?

A. It is on the printed form of the King Features Syndicate, Incorporated, International News Service Department.

Q. Now, that is what is commonly called in newspaper circulation the I.N.S. contract or service?

A. Yes.

Q. It is referred to by that rather than by King Features; am I right about it?

A. Yes.

Q. Was there a newspaper in Elyria when you became the owner of the Lorain Journal in Lorain?

A. Yes.

Q. Now, Robert Rice testified here for the Government as being the attorney for that paper as well as for the radio station. Do you know Mr. Rice.

A. Yes.

Q. How long have you known him?

A. Since the spring or summer of 1913, when I first [fol. 965] moved to Elyria.

Q. In connection with what did you meet him?

A. He was a member of the firm of Snoble, Fauver & Rice. I was employed by the Elyria Construction Company and I had an occasion to visit that law office. It was sometime in the spring or summer of that year that I first met Mr. Rice.

Q. Now, Mr. Rice testified about a conversation that he had with you in 1940. Now, may I ask you whether or not you had any conversation with Mr. Rice in 1940 in regard to the Elyria Chronicle-Telegram?

A. No, sir.

Q. Mr. Rice also testified about a conversation he had with you either in latter January or early February of 1947, in which conversation there was some suggestion made about the purchase or the sale of the Elyria Chronicle-Telegram. Did you have any such conversation with Mr. Rice?

A. No, sir.

Q. Do you know who the publisher of the Elyria Chronicle-Telegram is?

A. Mr. Hudnutt.

Q. How long have you known him?

A. I have know Mr. Hudnutt for a matter of about 25 years or more.

Q. In other words, you knew Mr. Hudnutt longer than [fol. 966] you knew Mr. Rice, or about the same time?

A. No. I knew Mr. Rice longer than Mr. Hudnutt. I

knew Mr. Hudnutt when I lived in Elyria, shortly after acquiring an interest in the Elyria Chronicle-Telegram, shortly after he acquired an interest in the Elyria Chronicle-Telegram, which was somewhere around 25 years ago, but I knew Mr. Rice back in 1913.

Q. When did you last talk to Mr. Hudnutt?

A. I talked to Mr. Hudnutt last December 12, 1946.

Q. And where?

A. At his office.

Q. Did that conversation have anything to do with the subject matter of the acquisition or purchase of the newspaper from him?

A. No, sir.

Q. Have you had any conversation of that kind with him?

A. No, sir.

Q. How are you able to fix the date of that conversation with Mr. Hudnutt?

A. I was subpoenaed in a lawsuit to appear as a witness in the City of Elyria. I think I have the original subpoena here. I testified in the morning and after leaving the court room I went over to say Hello to Mr. Hudnutt. That was on December 12, 1946, and that is the last time I saw or talked to Mr. Hudnutt.

Q. Now, you have stated that you didn't have any con-[fol. 967] versation in latter January or February, 1937 with Mr. Rice on the subject which he mentioned. Did you have any communications with him or from him?

A. Yes, I did. I had one in February of 1947, a letter addressed to me at Hollywood, Florida, and I replied to it, and I have the original letter and the reply, and I showed it to the Government men, and they have got photostatic copies of them.

Q. Do you have that letter?

Mr. Kramer: I have copies for everybody.

Q. Do you have the original there?

A. Yes, sir.

Q. What is the date of that letter?

A. The letter is dated February 20. My reply is dated February 22.

Q. Do you have any idea how long you had been in Hollywood, Florida in 1947?

A. I was there practically the whole month of February.

Mr. Fulton: Now, if your Honor please, I offer in evidence this exhibit and I am offering only the letter of February 22. There is attached to it some other letters which I may offer in a moment. I will read it because it is short.

The Court: Any objection to it?

Mr. Kramer: I would like to see it. Is the letter of [fol. 968] February 22nd?

Mr. Fulton: It is February 20, sir, the original.

Mr. Kramer: No, objection.

Mr. Fulton: February 20th.

Mr. Kramer: The 20th? Now I would like to see it.

Your Honor, I object to the letter of February 20th if it is offered for all purposes, if the court please, Mr. Rice not being on the stand. There is no question it is authentic. If it is offered to explain the letter of February 22nd, so as to make sense out of it, then I have no objection.

Mr. Fulton: I am offering it, first, for the purpose of showing that Mr. Horvitz was not in and about the parts to be talking with Mr. Rice in February, 1947.

Mr. Kramer: We stipulate that, your Honor.

The Court: What was that? I didn't get it.

Mr. Fulton: That Mr. Horvitz was not in these parts to have had any such conversation as Mr. Rice says took place. He put it latter January or early February.

[fol. 969] The Court: Well, I didn't so understand Mr. Rice to testify.

Mr. Kramer: Page 296 of the transcript, Mr. Rice stated: "As I say, I think it was mentioned in a telephone conversation before that. The first one that I can distinctly recall was in late January or early February, 1947, according to my best recollection."

The Court: Well, the most Mr. Horvitz says is that he was in Florida most of February. He can still be consistent.

Mr. Fulton: And he says he had no conversation with Mr. Rice of the kind testified to in latter January or February, '47.

The Court: I understand, but what I mean is you are seeking to corroborate him by showing these dates. It still could have taken place the latter part of January or early part of February and still be consistent with what Mr. Rice has said.

Q. Did you have any conversation with Mr. Rice in Cleveland or in Elyria any time during January or February of '47?

A. No, sir, I did not.

Q. Did you have any communication with Mr. Rice in June of 1948?

A. Some time in the late spring or early summer I talked to Mr. Rice on the telephone from Cleveland.

Q. What brought about that conversation?

A. The day before that I was in Lorain and Frank Maloy [fol. 970] told me that Mr. Hudnutt was very sick. He also told me that there was a rumor around that negotiations were going on for the sale of the Chronicle-Telegram. The next day I called Mr. Rice and asked him how Mr. Hudnutt was. He said he was a very sick man. I said, "Bob, I was told that in Lorain there are rumors that there are negotiations going on for the sale of the Chronicle-Telegram." I said, "Is that true?" He said, "No, it is not true." He said, "If it was I would know about it." And he said, "If anything happens, I will let you know."

Q. Now, Mr. Rice also talked about a conversation that took place in August, 1948. Do you remember any such conversation?

A. Yes, I do.

Q. Where did that conversation take place?

A. In my office in the Midland Building.

Q. Will you just tell the court briefly the substance of that conversation?

A. He had written me a letter with reference to the radio station and also with reference to the fact that we had circulated some newspapers.

Mr. Kramer: Objection, if the court please. We would certainly like to have the letter. We called for it. If he has got it we would like to know why we didn't get it. It [fol. 971] was in January of 1950 when we asked for it.

The Court: Is the letter here?

The Witness: Yes.

The Court: Why wasn't that letter produced?

The Witness: We went over their demands and on the advice of our attorney he told me that their demands did not cover that particular letter. Otherwise we would have given that letter to them.

The Court: Let me see it.

[fol. 972] (Court examines letter)

The Court: That most assuredly should have been furnished.

Mr. Fulton: That letter was not furnished, your Honor. I think when we went over this—I think I am stating this correctly—we went over the letters at the time and this letter was not among them, at the time of the first production. Sometime before this trial was to come on, sometime during the early part of this year, Mr. Horvitz brought it to my attention and I looked it over carefully and I said I had some doubt about that previous letter and I said to him I don't know whether it is covered by that request or not, I doubt that it is, and we could produce it over here at the trial, that I couldn't see that anybody would be particularly prejudiced by it. I think that's about the way in which the thing turned out.

Q. Am I right about that, Mr. Horvitz?

A. Yes.

The Court: Does the Government feel its case is prejudiced as the result of the failure to produce this letter?

[fol. 973] Mr. Kramer: No, your Honor, I must confess I do not.

Mr. Fulton: Will you read the last question and answer, please?

(Last question and answer read by reporter)

A. After saying hello to each other I said, "Bob, I don't like the tone of your letter. I want it distinctly understood now that there never has been any arrangement with the Chronicle-Telegram, either as to circulation or anything else, and you know the Chronicle-Telegram are not going to tell us how to run our business, and we are not trying to tell you how to run your business." That in substance was the opening of our conversation. I said, "As far as the radio station is concerned, we certainly do not intend to give them a lot of free publicity, carry their programs and cooperate with them, because we consider them competitors." I said, "You practically run the Elyria Savings & Trust Company which has the best location in the City of Elyria. I happen to be a stockholder in the Lorain County Savings & Trust Company. Would you permit the Lorain

County Savings & Trust Company to put any advertising features in your windows in your location, or in the lobby of your bank?'' He said, ''No.'' I said, ''Do you know of any department store in Elyria that would permit a spe-
[fol. 974] cialty store to exhibit its merchandise or advertising in that department store?'' I says, ''That's exactly what you are asking for,'' and I said, ''as far as we are concerned, we will run our paper and you run your radio station and let the Elyria Chronicle-Telegram run their newspaper.'' And at that time he told me, he said, ''I have been representing the Elyria Chronicle-Telegram for many years.'' Well then I said, ''I can't see how you can represent the Elyria Chronicle-Telegram, at the same time represent the radio station.'' He said, ''Well, if there is ever any conflict of interest my first loyalty is to the newspaper.'' Well I said, ''If you were our attorney and were representing the radio station under similar conditions we would fire you.''

Q. Now, in that conversation was anything at all said about the purchase or the possible purchase or the sale or possible sale of the Elyria Chronicle-Telegram?

A. There was no mention made of it in any way, shape or form, by either party.

Q. Would you just tell the Court briefly now what your general relations were with Mr. Hudnutt and his paper?

A. Our relations have always been very friendly. We have been good neighbors to Mr. Hudnutt and he has been good neighbors to us.

Q. Now, Mr. Horvitz, have you, or to your knowledge [fol. 975] has anyone connected with the Lorain Journal, had any kind of an agreement, call it what you will, standing or otherwise, with the Elyria Chronicle-Telegram covering the circulation of its paper, that is, of the Elyria Chronicle-Telegram, either through stand sales or carrier delivery in Lorain, in the City of Lorain?

A. Neither I nor anyone connected with the Lorain Journal nor the Lorain Journal has ever had any agreement with anybody connected with the Elyria Chronicle-Telegram covering the sale of the Elyria Chronicle-Telegram in Lorain or anywhere else.

Q. Have you or anyone connected with the Lorain Journal, to your knowledge, had any understanding or agree-

ment, however you might describe it, standing agreement or otherwise, with Mr. Hudnutt or anybody else connected with the Elyria paper on the subject matter of their taking or not taking, accepting or refusing advertising from merchants located in Lorain?

Mr. Kramer: Objection, if the Court please. Would you read the question.

(Question read by Reporter)

Mr. Kramer: To your knowledge?

Withdraw the objection, if the Court please.

A. I know that there never was any such arrangement [fol. 976] or agreement or understanding.

Q. Did you ever make such arrangement or enter into any such agreement or understanding, you as the policy maker of the Lorain Journal?

A. No, sir, and neither did anybody else connected with the paper.

Q. Who was your circulation manager?

Mr. Kramer: When?

Q. Who is now?

A. Harry Hughes is and has been for many years.

Q. Now, may I ask you whether you had any conversation with him on this matter of the circulation of the Elyria paper in Lorain or the Lorain paper in Elyria, or about any so-called understanding or agreement between the papers on that subject?

A. After I saw the bill of complaint I talked to Harry Hughes and asked him if he ever made any arrangements, ever had any understanding or agreements, or any understanding of that kind, and he said he did not.

Mr. Kramer: Objection, if your Honor please. He is about to state what Mr. Hughes stated.

The Court: Sustained.

Mr. Kramer: Mr. Hughes is in the United States.

[fol. 977] Mr. Fulton: If your Honor please, I think that evidence is permissible. This complaint says that The Lorain Journal Company, a corporation, and four individuals who are named, together and with others. They have gone on and tried this case that among the others was Mr. Hughes. Therefore, I think the conversation which was had with Mr. Hughes is permissible.

The Court: Let Hughes deny it here.

Q. Where is Mr. Hughes now?

A. Mr. Hughes is in Florida. He has a bad heart and the doctor advised him to go to Florida if he wanted to live.

Q. Mr. Horvitz, does your paper—

The Court: You could take his deposition.

Mr. Fulton: I beg your pardon?

The Court: You could take his deposition.

Mr. Fulton: We will still take it.

The Court: I said you could take his deposition.

The Witness: We expected him back before this but he didn't get back.

Mr. Fulton: I assume—

[fol. 978] The Court: He can testify as to what he knows, but what somebody told him certainly isn't competent.

Mr. Fulton: Well, I think normally it wouldn't be, if the Court please, but this is a conspiracy case. The only ground I can see on which this evidence might be excludable is that the Government—

The Court: Just a minute. Do you concede that there was testimony here that there was a conspiracy with others not named?

Mr. Fulton: I do not.

The Court: Well, if you don't concede that you certainly can't show this testimony.

Mr. Fulton: But as against the concession, I make this assertion, that the Government has tried its case on that theory and has offered evidence of conversations with these other people who worked for the Lorain Journal, as if they were embraced within the class of those unknown. It's on that basis.

The Court: I didn't so understand the testimony here that there were some employees of the Lorain Journal who had conversations. I didn't understand them to be those who are part of the conspiracy and those who were em-

[fol. 979] braced within that phrase "unknown".

Mr. Fulton: I had assumed it from the way they tried this case. The only basis on which I would say this testimony might be excludable is that if the conversation that took place occurred after the termination of the alleged

conspiracy, which I don't concede, but they allege it is a continuing one.

Mr. Kramer: That is right.

Mr. Fulton: Does the Government concede that Hughes is not a conspirator, claimed to be one?

The Court: I don't think they have to concede anything, Mr. Fulton. I think if Hughes' comments are admissible, they are admissible either through him or through his deposition.

Mr. Fulton: Well, I should like if the Court please, to get that evidence in this case by deposition or by a stipulation that if he were here he would testify there was no standing agreement and that he made no such statement. If they won't do that, I think I should be permitted to take the testimony some place for use in this trial, in view [fol. 980] of the fact that the testimony came about while this case is on trial.

The Court: I have no objection to your taking his deposition.

Mr. Kramer: At the conclusion of the case.

The Court: At the conclusion of the testimony, and I will permit it to be a part of the record.

Mr. Kramer: No objection, your Honor.

Q. Does the Lorain Journal have its newspapers for sale at news stands in Elyria?

A. Yes, have had for many, many years, and also by carrier.

Q. Are your newspapers distributed in any other fashion than through news stands?

A. Also by carrier.

Q. Will you tell the Court how long your paper has had its circulation through news stands and carriers in Elyria?

A. As long as I can remember, and that goes back to the early '20's, somewhere in the early '20's.

Q. Has your circulation in the early '20's—that was before your connection with the paper?

A. Yes.

Q. How did you acquire the knowledge at that time?

A. Because I used to see it on the stands and I used to [fol. 981] buy it on the stands when I lived in Elyria.

Q. That was when you lived in Elyria?

A. Yes.

Q. What about the circulation of your paper in Elyria during the past several years, has it been on the increase or on the decline?

A. It has been on the increase.

Q. When did you first learn that the Elyria Chronicle-Telegram wasn't being distributed either through news stands or by carrier in the City of Lorain?

The Witness: Will you read that question, please?

(Question read by reporter).

A. On May 27, 1949.

Q. Under what circumstances did you learn it?

A. Mr. Victor H. Kramer called me on the telephone that morning and said he would like to talk to me. He came in, introduced himself and made a statement. I then asked him if he had any objection to my bringing in my stenographer and he said he did not. I then called in my stenographer and asked him to repeat the statement that he made to me, and present with me in my office was my brother, my son, Mr. Kramer was there, and Mr. Rashid, sitting over there at the table. I asked him to repeat the statement that he had made to me, in the presence [fol. 982] of the stenographer. He said that—

The Court: Well, the question was when did you learn, and by what means.

Q. Under what circumstances, was the last question.

A. Through a conversation that I had with Mr. Kramer in the presence of the stenographer, is the first time I knew that the Elyria Chronicle-Telegram was not for sale either on stands or by carrier in the City of Lorain.

Q. Now, Mr. Horvitz, leaving that subject for a moment and getting over to the subject matter of advertising, I understood you to say previously that you as the publisher formulated the advertising policy. Am I right about that?

A. Yes, sir.

Q. Has your paper, under your policy, carried advertising of Elyria stores?

A. No, sir.

Q. Have you carried advertising of the Cleveland stores?

A. No, sir.

Q. Have you ever been offered advertising of shop keepers and stores and advertisers from Elyria and from the City of Cleveland?

A. Yes.

Q. What have you done when those offers have been made [fol. 983] to you?

A. We have refused them unless it was some small item that had in no way conflicted with any of our advertisers in Lorain, and that I don't suppose has happened over a few occasions over a matter of many years.

Mr. Kramer: If the Court please, he said he has refused, and I would like to find out if he refused it orally or in writing. If in writing, we want the letters. We received no such letters.

Mr. Fulton: I'll put that question.

Q. Has your declination or refusal of such advertising been oral or by letter?

A. It has been oral, and on some occasions back years ago it was by letter.

Q. Just tell the Court what the policy of the Lorain Journal is—

The Court: We'll take a recess at this time.

(Recess taken)

Mr. Fulton: I will rephrase my last question.

Q. Just tell the Court, Mr. Horvitz, what is the policy of the Lorain Journal with reference to Elyria and Cleveland advertising. I mean by the kind of advertising I men- [fol. 984] tioned in the previous questions.

A. Our policy is not to accept advertising from the Elyria or Cleveland merchants that will in any way, shape, or form conflict with our Lorain merchants.

Q. How long has that policy been in existence?

A. As long as I have had any connection with the paper, and long before that, back in the early '20s when I used to buy the paper on the stand, I observed that.

Q. Have you been accepting or have you been carrying advertisements of merchants in your paper who also advertise in the Lorain Sunday News?

A. Yes, sir.

Q. Has that always been the policy?

A. Yes, sir.

Q. Are you able to tell the Court how many advertisers who advertise in the Lorain Sundays News also advertise in your paper, the Lorain Journal?

Mr. Kramer: If the Court please, I would like it pointed out to the witness that the question calls for a yes or no answer, and I shall object if he attempts to give an answer stating the basis of his knowledge.

The Witness: What was the question?

(Question read by Reporter)

A. Yes, sir.

[fol. 985] Q. How many do?

Mr. Kramer: Objection, if the Court please.

The Court: Well, I presume the objection is predicated on his ability or inability to state it?

Mr. Kramer: I wouldn't be willing to make such a sweeping statement. I would like to know what the basis of his knowledge is so that I could tell whether it is objectionable or not. Did he make a study, did he go to each of the advertisers, is it triple hearsay or double hearsay? I might not object if it is double.

The Court: I have difficulty in understanding the point of the objection. You may cross-examine him and prove that his statement is inaccurate.

Mr. Kramer: All right, your Honor.

The Witness: What was the question?

(Question read by reporter)

The Court: What are you now consulting, Mr. Horvitz?

The Witness: A memorandum that was prepared which covers a list—

[fol. 986] The Court: Prepared by whom?

The Witness: Prepared in the office at Lorain for me, which covers a list of the advertisers who advertise in the Lorain Sunday News and also in the Lorain Journal.

The Court: The objection will be sustained unless he prepared it himself.

Q. Was that prepared under your supervision?

A. Yes, sir.

Q. Under your direction?

A. Yes, sir.

Q. And by whom?

A. It was prepared by Mr. D. P. Self.

Mr. Fulton: All right. Is the objection still sustained?

The Court: No, he may answer if it was under his direction and if he was there at the time it was prepared and had looked at the records. But if it is a memorandum prepared for him by somebody else when he wasn't there I think it is objectionable. If he was there at the time and saw the books and records from which it was being prepared, supervision includes that.

Mr. Fulton: I asked him the general question whether [fol. 987] it was done under his supervision. If you want me to expand on that I will.

The Court: I think you should find out to what extent he did supervise. If he did, that's one thing, but if he didn't, if it is just a memorandum prepared for him by someone else, of course it is not admissible.

Q. It was done under your supervision?
A. Yes, sir.
Q. Were you there when it was done?
A. When this memorandum was prepared?
Q. Yes.
A. No.
Q. Did you see the data, the underlying data from which the memorandum was prepared?
A. Yes, sir.
Q. Who brought that to your attention?
A. I saw that in the Lorain Sunday News, I saw that in our own paper, that is, the different advertisers that appeared in the Lorain Sunday News and also appeared in our own paper, because we get the paper daily and we get the Lorain Sunday News weekly.

Mr. Kramer: No objection, your Honor.

Q. How many persons who advertise in the Sunday News, the Lorain Sunday News, also advertise in the Lorain Journal?

[fol. 988] The Court: That's a rather sweeping question, Mr. Fulton. Do you mean regularly, or isolated instances, or just what do you mean by that? I can't quite follow your question. If they are regular advertisers, that's one thing, but if it is an isolated situation of a classified ad that may have appeared in both papers, that's still another proposition?

Q. How many are there?

Mr. Fulton: Then I will ask the other question.
The Court: You ought to ask that one first.

Mr. Fulton: All right.

Q. You have checked the number from the list that was prepared. I assume that list has the names of the advertisers as well?

A. Yes, sir.

Q. Are those advertisers persons who advertise regularly in your paper?

A. Those are advertisers that most of them advertise regularly in our paper, some of these advertisers advertise regularly in the Sunday News and some only advertise [fol. 989] once in awhile. But this list is from July 1, 1949.

Q. May I have the list, please?

A. (Handing paper to counsel).

(List referred to was thereupon marked by the Clerk Defendants' Exhibit F.)

Q. I will show you now this paper marked Defendants' Exhibit F consisting of four pages, each of the four pages, commencing with the second page, is numbered. Is that the memorandum to which you referred a moment ago?

A. Yes, sir.

Q. That's the memorandum that contains the list of those who advertise in both papers?

A. Yes, sir.

Q. Could you tell the Court from an examination of that list who among them advertise with regularity in your paper and who among them advertise with regularity in the Lorain Sunday News?

A. I can tell you some of the accounts, but not all. Atkinson & Williams, Heilman's Restaurant, Outlet Furniture, First Federal Savings & Loan Association, Reidy-Scanlan, Delis Bros. Furniture Company, The Ohio Public Service Company, The Ohio Fuel Gas Company, The Central Bank Company, The Lorain Banking Company, Kutza Pharmacy, Eldreds Stationers, Stones Grill, Llewellyn Pontiac Motor Company, Moulas Bros. Furniture, Advance Motor Sales, [fol. 990] Kilgore Oldsmobile, Colgan Motors, Inc., Seymour's Jewelers, Juntz & Joyce, Tivoli Theater, Al Ford Chrysler-Plymouth Sales, Thew Shovel Company, John W. Galbreath Company, Wood Lumber Company, Dreamland

Theater, Palace Theater, Ohio Theater. There are many more but I just can't recognize them by glancing without checking back in the papers.

Q. Those you have named are advertisers in the two papers?

A. They are regular advertisers with us, and I think that they all advertise on many occasions in the Lorain Sunday News?

Q. Do you have personal knowledge of that?

A. Yes, I see the Sunday News every week and I see our paper every day and I look at the ads that appear in the Sunday News and also that appear in our paper.

Q. Once more, how many advertisers are there? You counted them.

Mr. Kramer: I object to that, your Honor?

Mr. Fulton: We will offer this exhibit in evidence.

Mr. Kramer: I object to the exhibit in evidence. I have had no opportunity to cross-examine Mr. Self.

The Court: In what way do you think it is admissible, [fol. 991] a memorandum prepared for him by somebody else. That's a resume of records.

Mr. Fulton: It was prepared for him by somebody else under his supervision based on information about which he has knowledge.

The Court: He is here to testify in respect of it and if he can't tell anything about it, it most certainly isn't admissible. Bring in whoever prepared it, and perhaps it can be offered through that person. But he just said himself he can't recognize some of them.

Mr. Fulton: We offer that in evidence, if the Court please.

The Court: The objection will be sustained.

Q. In other words, those that you did list just now in your last answer, however, are those which advertise in both newspapers in Lorain?

A. Yes, with some regularity.

Mr. Kramer: Will you read the last part of the answer, please?

(Answer read by reporter).

Q. Now, there was some evidence offered by the Government to the effect that your paper had declined adver-

tising from the Lorain Sunday News, I mean advertising offered by the Sunday News itself. Has your paper, the [fol. 992] Lorain Journal ever accepted any advertising from the Lorain Sunday News?

A. Yes, it has.

Q. Do you have any evidence of that with you?

A. Yes.

Q. Will you produce it, please.

A. (Handing documents to counsel).

(Documents referred to were marked by the Clerk Defendants' Exhibits G, H, I and J).

Q. Now, these Exhibits marked G to J, inclusive, are what?

A. Those are our original records covering the placing and the insertion of the ads, a series of advertisements that we ran for the Lorain Sunday News.

Q. Does that include the ad itself, classified ad?

A. It shows the ad itself but, of course, the newspaper will show how the ad was run.

Q. Do you have the newspaper here with you?

A. We have the bound volume covering that particular date.

Q. That's this big blue book which would show that those ads were inserted?

A. Yes, sir, they ran on those particular dates in accordance with this order.

Q. Are these Exhibits G to J inclusive the type of paper, memorandum, or entry, that you use in the regular course [fol. 993] of business in receiving from advertisers classified advertising?

A. Yes, sir. These are the original documents.

Mr. Fulton: We now offer in evidence these exhibits marked Defendants' Exhibits G to J, inclusive.

The Court: They may be received.

Q. Mr. Horvitz, did you, or to your knowledge anybody on behalf of the Lorain Journal, ever—and I am using the language of the complaint, I think—threaten to refuse or ever refuse to publish in the Lorain Journal advertising by those persons, firms and corporations who advertised or proposed to advertise in the Lorain Sunday News?

A. No, sir.

Q. There has been some testimony here about Sears Roebuck & Company's advertising transactions. Did you refuse to renew the advertising contract of Sears Roebuck & Company in 1943?

A. No, sir.

Q. Did you refuse to receive their advertising because they advertised in the Sunday News?

A. No, sir.

Q. You were in the court room, were you, when you heard testimony given in respect to some transaction with Sears Roebuck & Company?

[fol. 994] A. Yes, sir.

Q. Did you attend any meeting such as was described?

A. Yes.

Q. Where was that meeting held?

A. It was held in the office of the Lorain Journal, in the conference room.

Q. Who was there?

A. Norton, Bremer was there part of the time, Maloy was there a short part of the time, and myself. Mr. Bennett was there with his man from Pittsburgh. After some discussion, he called his office and asked Mr. Geiger to come over there, but Mr. Geiger was not there when they first came into the office.

Q. Did you in 1945 refuse to renew the contract of Sears Roebuck & Company?

A. Yes, sir.

Q. Under what circumstances was it refused?

A. Over a period of years the managers of Sears Roebuck had been fighting the Lorain Journal. In 1938 the Sears Roebuck manager was one of the instigators of a boycott against the Lorain Journal because the Lorain Journal raised its advertising rates 10 cents per inch. In 1945, and in the latter part of 1944, I was informed that Mr. Geiger, the local manager for Sears Roebuck was going around and visiting merchants and asking them to advertise in the Lorain Sunday News and to cut down their ad-

[fol. 995] vertising copy in the Lorain Journal. After I had received that information, I issued orders not to renew the contract for Sears Roebuck advertising. Then a letter was received which I have here—

Q. This was a letter in 1945?

A. In 1945. A letter was received by our office in Lorain.

Q. Produce that letter, please.

[fol. 996] A. (Producing letter).

Q. Was there any other correspondence at that time which led up to this meeting?

A. Yes, I wrote Mr. Bennett in answer to that letter, on May 7.

Q. The letter first referred to is dated May 3, 1945?

A. Yes. I wrote him on May 7, in answer to his letter of May 3, 1945. I received a letter from him dated May 11. I again wrote him on May 14. I received a telegram from him dated May 15. I wired him on May 16. I received another telegram from him dated on May 16, arranging for the appointment in the Lorain office.

Q. Now, all of these letters and telegrams which you mentioned were carried on between you and Mr. Bennett who testified here, leading up to and prior to this meeting about which he discussed?

A. All with the exception of the first letter, which was addressed to Mr. Bremer. All the rest of them were addressed to me or I wrote them.

Q. This first letter of May 3, addressed to Mr. Bremer, you answered?

A. Yes.

Q. So there will be no misunderstanding about it, this packet of papers marked K-1 to K-8 are the letters and telegrams exchanged between Sears, Roebuck and you prior to that meeting?

[fol. 997] A. Yes.

Mr. Fulton: We offer these in evidence.

Mr. Kramer: I would like to see them, if the court please.

Q. What was discussed at that meeting?

The Court: Will you wait a second until he sees them and I get a chance to read them?

Mr. Kramer: I object to this because it was a letter between Mr. Bremer and Mr. Bennett. Mr. Bremer was on the stand less than a week ago and he could have been asked about the letter. It is hearsay.

I object to K-2 for the same reason, telegram from Mr. Bennett to Mr. Horvitz.

The Court: Is there any objection on the ground that it is not authentic?

Mr. Kramer: No, your Honor, I am not contesting the authenticity of the letter. I am objecting on the ground that it is hearsay.

The Court: Why is it hearsay? It relates to a conversation or correspondence between the parties. There is a group of papers which purport to be correspondence between the parties. If that has taken place it can't be hearsay. If you have the letter, there it is.

Mr. Kramer: My understanding of hearsay, if the court [fol. 998] please, is evidence of what a person says who is not on the stand. There are several exceptions to the hearsay rule, one is a declaration of a co-conspirator, and another is an admission.

The Court: The correspondence is certainly direct. It is not hearsay, is it?

Mr. Kramer: We think it is hearsay.

The Court: Overruled, if that is the objection.

Mr. Kramer: I haven't read all of them. Those are the sole objections, if the court please, so far.

If the court please, I want to make it clear that I don't object to the admittance of these letters in evidence for the purpose of explaining what the man meant on the stand, in his reply.

The Court: If it is admissible for any purpose, I will admit them, so what difference does it make?

Mr. Kramer: I think your Honor has a question there I can't answer. I ask to withdraw my objections.

Mr. Fulton: We offer these in evidence. We won't read them at the present time.

The Court: I think you better read them.

(Defendants' Exhibits K-1 to K-8 read to the [fol. 999] court)

Q. Now, as the result of that correspondence, the last couple of telegrams, the meeting did take place then in the Lorain Journal's office on the date mentioned?

A. Yes.

Q. On Monday, the 21st; is that right?

A. Whatever the date shown on that telegram, that was the date of the meeting.

Q. Now, this question is just a general one: What was the subject matter?

A. The subject matter was the renewal of the contract with Sears, Roebuck.

Q. What if anything was said about this Sunday News problem, if anything, and by whom?

A. Something was said by me and also by Mr. Geiger and by Mr. Bennett, and the man from Pittsburgh, with reference to the Sunday News: we all discussed the Sunday News.

Q. What was the conversation? If you can't give it accurately, state what was said by the several persons present in that conversation.

A. Well, when Mr. Bennett first came in he had with him his man from Pittsburgh. He said he was there to discuss the matter of renewal of the contract with Sears, Roebuck. I said to Mr. Bennett, "We will be glad to discuss it with you, but aren't you going to have your Mr. Geiger, your [fol. 1000] local store manager here?" He said "We didn't intend to." I said, "Well, I was going to say many things about him. I would like to have him present so it won't be a case of talking about him behind his back." He said, "Well, you are very fair about that." I said, "I would appreciate it very much if you called him, if he is in town." He said, "Yes, he is in town." He went to the telephone and called the store and asked Mr. Geiger to come over. Mr. Geiger then came over, but he was not there when we first opened the meeting.

When Mr. Geiger came there I said to Mr. Bennett, I said, "For many years your store managers here have taken delight in fighting the Lorain Journal." I said, "You had one manager back in 1938 who helped organize and was one of the leaders of the boycott against the Lorain Journal because we had the nerve to increase our advertising rates ten cents an inch after a period of many years." I said, "We have tried to give you good service." Mr. Geiger says, "Yes, you have always given us good service". I said, "But for some reason all the managers, at least the two you have had here, have been fighting the Lorain Journal. Now, Mr. Geiger is here and I would like to tell him what part he had in it." I turned to Mr. Geiger and I said, "You went around to the merchants and tried to solicit them and take ads out of the Lorain Journal and put them in the Sun-

[fol. 1001] day News." I said, "We don't go around telling people not to buy at your store or telling you how to run your store." He said, "I will prove to you I didn't do it." I said, "I can prove to you you did and give you the names of the people you went to." Then Mr. Bennett wanted to know if Mr. Geiger could prove it was true, and he at first denied it and then later admitted it was true. I said to Bennett, "If you want to spend your money in advertising in the Sunday News you can spend it, but if you want to continue fighting us, that is another question." I turned to Mr. Geiger and I said, "How much circulation has the Sunday News?" He said they claimed 4500 through the ABC Report. I said, "What do you think they have?" He said, "I don't think they have over 2500." I said, "What do you pay them per inch?" He said, "50 cents an inch." I said, "If you take that 50 cents an inch for what you think is 2500, and compare that with ours, which has been running seventeen thousand or eighteen thousand circulation—and I have the ABC Report before me—we charge 70 cents an inch, at that rate they are charging, on the basis of their circulation, their rate to you is about $3.50 an inch, compared to our 70 cents an inch, on the basis of circulation." Then I said, "Do you consider that newspaper as good a newspaper as the Lorain Journal?" Both he and Mr. Bennett said no, they didn't. Mr. Bennett said [fol. 1002] he considered the Lorain Journal one of the best newspapers in the country. I said to Mr. Bennett, "You can spend your money wherever you want to; we can't tell Sears, Roebuck where to spend their money for advertising but we are not going to have Sears, Roebuck fight us every chance they have. If you want to continue those tactics we prefer that you draw out of the paper." After that Mr. Bennett said, "What do we have to do to try to get a renewal?" I said, "All you have to do is to have your store managers cut out fighting us on every basis they can." He said, "Is it all right on that basis?" I said, "Yes." I told him to prepare a contract.

Q. Do you know Mr. Gooris who testified here?

A. Yes, sir, I do.

Q. Was he discharged by your paper?

A. Yes, sir, I discharged him.

Q. For what reason?

A. For being a drunkard, a liar, coming to the office drunk, and making a nuisance of himself around town.

Q. Do you know Robert Harley?

The Court: Who is this man? The man about whom you used all these descriptive terms?

Mr. Fulton: Gooris.

The Court: He is the man who is now connected with another newspaper?

[fol. 1003] Mr. Fulton: Yes, sir, he is with the Cleveland News.

Q. Do you know Robert Harley?

A. Yes.

Q. Was he discharged by your newspaper?

A. Yes, sir.

Q. Do you know what position he occupied with the newspaper?

A. He was managing editor for awhile.

Q. What if anything did he have to do with the circulation department?

A. Nothing.

Q. Did he resign or was he discharged?

A. He was discharged.

Q. Do you know why he was discharged?

A. Yes, for incompetence.

The Court: What's that man's name again?

Mr. Fulton: Harley.

Q. He testified about a mimeographed letter with reference to the Lorain Journal's advertising policy. Did the Lorain Journal prepare any mimeographed letter of its advertising policy?

A. No, sir.

Q. Was there any place, to your knowledge, in the Lorain Journal offices, any mimeographed piece of literature with regard to advertising or advertising policy?

[fol. 1004] A. Nothing with regard to any advertising policy.

Q. Was there any mimeograph printed material that you had for inspection that had to do with the advertising policy of any other paper than yours?

A. Yes.

Q. And what paper was that?

A. That was a mimeograph statement that the Elyria Chronicle-Telegram got out and sent out, and they sent us a few copies, and I have that and I showed that to the Government and I think they took photostatic copies of it.

Q. The Government put in evidence here as its Exhibit 151 one of your advertising contracts. This happens to be with the Kroeger Company. May I ask you whether or not that is a typical type of contract that you used?

A. This is our standard form of contract, and has been in use by us for a long time, over a long time.

Q. Is that the type of contract each advertiser signs?

A. The local advertisers sign this contract, whether it is classified or display.

Mr. Fulton: Now, if the Court please, I would like to call attention to several provisions in this contract at this time.

"The Lorain Journal Company is privileged to revise or reject any advertisement which is deemed objectionable either in its subject matter or phraseology or opposed to public policy or the policy of the paper." Again, quoting, [fol. 1005] "This contract shall cover only the advertising of the parties signing this document." Again quoting: "This contract may be cancelled by the publisher upon thirty days written notice." Now, Mr. Horvitz, did you have any arrangements with advertisers that they shall advertise with you and your paper exclusively?

A. No, sir.

Q. You had no arrangement with them or agreement with them or understanding with them, apart from this form contract you make with local advertisers, illustrated by Exhibit 151?

A. The only understanding, agreement, contract, with them is that written contract with the local advertisers.

Q. On this matter of policy, what has been the policy of your paper as formulated by you, that is, its advertising policy, with reference to advertisers who advertise, or I will put it as the Government witnesses did, intended or [fol. 1006] intend to advertise on this Elyria radio station?

A. Our policy has been, and I so informed our men, that if anybody advertised or wanted to advertise on the radio station, to tell them they were free to spend their money

wherever they wanted to; but over a period of many years we had attempted to build up the Lorain Market, and we considered that radio station in Elyria a radio station, and we felt that the advertising over the Elyria radio station would tend to break down the Lorain market. I told our men that if anybody wanted to advertise on the radio to say to them that in order to be fair to yourself, fair to us, and fair to everybody else, we would suggest that you try the radio station out, concentrate your advertising on that radio station, and also tell them that if they wanted to advertise on the radio and concentrate on it in spite of the fact that we had a contract, we were perfectly willing to waive that contract. I also told them to tell them if they didn't want to ask us to waive the contract and still wanted to use the radio station, tell them in order for them to give the radio station a fair trial that we would cancel their contract.

Q. Did you issue instructions to that effect?

A. Yes, sir.

Q. And to whom?

A. I issued those instructions to Mr. D. P. Self, told him to tell that to the men on the advertising staff. I [fol. 1007] told that to Frank Maloy at the same time, but on many occasions.

Q. And those instructions were issued in the first instance where?

A. In the office of the Lorain Journal.

Q. At the time you issued the first instructions to those men on this subject you have just told the Court about, was there any discussion about advertising rates?

A. Yes, I told them to also call the attention of the advertisers to the effect that the advertising rates of the Elyria radio station were as high or higher than almost any other radio station in any city in Ohio, comparable in size to Elyria.

Q. Mr. Horvitz, of your own knowledge now, your personal knowledge, do you know whether the Elyria radio station ever refused any advertising?

A. Yes, I do.

Q. Do you remember of any particular instance or episode?

A. Yes, I do.

Q. Tell the Court about it.

A. A certain religious organization, I can get you the name, made a contract with the radio station to do some religious broadcasting. The contract was signed and the Elyria radio station cancelled the contract, wouldn't go [fol. 1008] through with it.

Mr. Kramer: May it please the Court, may I inquire if he was asked if he knows whether the Lorain Journal ever turned down advertising? Did I miss that?

The Court: No, whether the radio station did.

Mr. Kramer: I object then. I do not see the relevancy of it.

The Court: What difference does it make?

Mr. Fulton: Well, we cross-examined Mr. Ammel about the situation. I wanted a full story of that episode given to your Honor.

The Court: You say you did examine him?

Mr. Fulton: I did, yes, Mr. Ammel, the radio station proprietor.

The Court: Was Mr. Horvitz present?

Mr. Fulton: Well, he knows about that episode. I thought your Honor might like to hear both sides, the entire story.

The Court: If it is competent, of course I do.

Mr. Fulton: Well, we will pass to some other sub-[fol. 1009] ject.

Q. Mr. Horvitz, was the Elyria radio broadcasting station ever offered to you for sale?

A. Yes, sir.

Q. By whom?

A. By Mr. Howard Metzenbaum, who is with Halles' Brokers.

Q. When?

A. In January of this year.

Q. Did you display any interest in that?

A. I will give you the conversation if you want it.

Q. The Court may not permit it but I will start you off.

Mr. Kramer: No objection.

A. I was in the lobby of the Union Commerce Bank Building, going out when some man hailed me and says, "You don't remember me, Sam, do you?" I says, "Your voice is

familiar but I can't just place you." He said, "I am Howard Metzenbaum. I talked to your brother about the Elyria radio station." I said, "He told me about that." He said, "Well, I can give you any information,—balance sheets, operating statements, everything." He said, "Would you be interested in purchasing that radio station? I think you can buy it cheap." I said, "No, we aren't interested in buying it." He said, "If you are, will you get in touch with me?" I said, "If we are we will get in touch with you."

Q. What if any interest have you displayed in the ac-[fol. 1010] quisition of the Lorain Sunday News?

A. That has been offered to us for sale.

Mr. Kramer: Objection, if the Court please. There is no charge in the complaint that they attempted to purchase the Lorain Sunday News, therefore, I submit the issue is completely irrelevant.

Mr. Fulton: All right.

Q. I think the Government offered in evidence this Exhibit 119, and that has to do with the ABC Report with regard to the circulation of the Lorain Journal. That Exhibit 119 is the ABC Report for the period ending December 31, 1948?

A. Yes, sir.

Q. That recites the total out-of-state circulation of the Lorain Journal to be what?

A. Total out-of-state circulation is 165 copies, out of a total circulation of 20,690.

Q. Are you able to enlighten the Court as to how that number of out-of-state circulation was made up?

A. All other states, 153; military service, destination unknown, 10; foreign, 2.

Q. Did you ever solicit any out-of-state circulation?

A. No, sir.

Q. Why and under what circumstances do you send your [fol. 1011] paper out of the state?

A. People go away on vacations, they want their local paper to keep up with the local news.

Q. I think it has been testified to but we might get it again at this place.

A. Will you let me finish my answer, Mr. Fulton?

Q. Go ahead.

(Previous answer read by reporter.)

A. (Continued) The boys in the service want to keep up with the local news. We send it to them. Or some people move away from Lorain and they want to keep up with their neighbors in the local news and get the paper for that reason.

Q. Do you know what the percentage of out-of-state circulation is?

Mr. Kramer: Objection.

A. It is a fraction of 1 per cent.

The Court: The Court could calculate it, I suppose, or he could have used some sort of device to calculate it.

Q. On this subject matter of the quality of your newspaper, has it ever received any prize or prizes?

A. Yes, sir. We were declared to be the finest newspaper in the United States as far as gathering local news for any [fol. 1012] city anywhere in the classificaton of 20 to 50-thousand circulation. That was in 1948. In 1947 we were awarded the second prize. In '48 we were awarded the first prize in the United States.

Mr. Kramer: Can we find out by whom?

Q. By whom?

The Court: This is very interesting but I wonder what it has to do with the case.

Mr. Fulton: Nothing, your Honor.

The Court: It has nothing to do. Let's stay within the case.

Mr. Kramer: If the Court please——

The Court: Is the Government interested in it?

Mr. Kramer: Yes, if the Court please.

The Court: I didn't know the prizes awarded newspapers had anything to do with the violation under the Sherman Anti-Trust Act. If it doesn't there are enough questions involved in this lawsuit. Let's keep it within its proper limits.

Mr. Fulton: I am going into another subject. It is a matter I can probably finish before 12:30 but I would like to not break into it.

[fol. 1013] The Court: All right. We have progressed

fairly rapidly. The Bailiff will adjourn court until two o'clock.

[fol. 1014] (Noon recess taken)

Monday, March 13, 1950, 2:00 o'Clock P.M.

Direct Examination of S. A. Horvitz (Continued):

By Mr. Fulton:

Q. I was about to say retreating, but I will say retracing my steps for just a moment, I mention again the notes you couldn't find this morning. Do you have available those eight notes of $100,000 each with you?

A. Yes, sir.

Q. And available for inspection by the other side if they desire to look at them?

A. Yes, sir.

Mr. Kramer: We do.

Mr. Fulton: You don't care about them?

Mr. Kramer: I say we do desire to look at them.

Q. And you have looked at those notes again, have you?

A. Yes, sir.

Q. And your signature upon them is merely in your capacity as an officer?

A. As an officer.

Q. Do you have them all there?

A. I have the eight notes here.

Mr. Fulton: Mr. Kramer would like to see them. Let [fol. 1015] me have the folder.

(Handing folder to Mr. Kramer.)

Q. Did you ever make an effort to buy the Lorain Sunday News?

A. No, sir.

Q. Was it ever offered to you for sale?

A. Yes, sir.

Q. What did you do with the offer?

A. Told them we were not interested in the purchase of the Lorain Sunday News.

Q. Now, getting over to the subject of national advertising, will you tell the Court how national advertising is defined in the newspaper field?

A. National advertising is advertising that is prepared by advertising agencies, and sometimes by the manufacturers of certain products, and they are forwarded to the Lorain Journal for—they are either forwarded by the manufacturer or the advertising agency or given to the Lorain Journal by the local distributor of that product, and are for the purpose of being published in the Lorain Journal in the City of Lorain for its readers in Lorain County for the purchase of goods in those places.

Q. Is that the definition used in what field, now, general advertising field?

A. That is the way we understand national advertising.

Q. Well now, isn't it a fact that many of the [fol. 1016] national advertised products—I'm not talking about contracts now, but products advertised over the Elyria radio broadcasting station are carried through your paper, the Lorain Journal?

A. Yes, sir.

Q. And is it a fact that many of the nationally advertised products that are carried on that radio station and in your paper, the Lorain Journal, are also carried on the Cleveland radio stations?

A. Yes, sir.

Q. What is the fact as to whether or not such nationally advertised products are carried in all magazines, periodicals of general circulation?

A. Practically all national advertising is carried in magazines of general circulation that are distributed and sold in Lorain County.

Q. What is the fact in that respect with respect to nationally advertised products being carried in the Cleveland newspapers, all of them, and the Elyria newspaper?

A. Practically every national ad that we carry is carried in the Cleveland newspapers or the Elyria paper.

Q. Of your own personal knowledge, do the Cleveland radio stations have a coverage in and through and over [fol. 1017] Lorain County?

A. Yes.

Q. Now, Mr. Horvitz, these questions that I next put are rather general and blanket. Sometimes I wonder why we

ask them because they seem a bit useless, at least to the outside world. I want to know, did you—did you, now—at any time since acquiring the Lorain Journal, or in connection with its acquisition, seek or attempt in any manner then or thereafter to monopolize interstate commerce or trade?

A. No, sir.

Q. Did you, either in acquiring that newspaper, that is, the Lorain Journal, or after its acquisition, engage in a conspiracy with anybody, or with those named in this petition, with your brother Isadore Horvitz, D. P. Self and Frank Maloy, in a conspiracy in restraint of trade?

A. No, sir.

Q. Of interstate commerce and interstate trade?

A. No, sir.

Q. Or in such conspiracy with anybody, or with those persons I have meintioned, to monopolize interstate trade and commerce?

A. No, sir.

Q. Being still a little bit uncertain about the exact wording of the complaint, I will put this to you. Did you enter [fol. 1018] into any such conspiracy of the kind that I have outlined with the persons that I have mentioned at the times and places, in an attempt to monopolize interstate trade and commerce?

A. No, sir.

Q. Now, did you with these individuals named in the caption and named in one of my previous questions, or with others, aid or assist or abet them or others in any attempt to monopolize interstate trade and commerce?

A. No, sir.

Q. Now, did any of these persons named in this petition, your brother, Mr. Self, Mr. Maloy, or any others, ever enter into a conspiracy with you to do any of the things I have mentioned, such as a conspiracy in restraint of trade, a conspiracy to monopolize interstate trade and commerce, a conspiracy in an attempt to monopolize interstate trade and commerce? Did they?

A. No.

Q. Did they, or any others assist you or aid you or abet you in any attempt to monopolize interstate commerce?

A. No, sir.

Q. Would your answer be the same as in all of those ques-

tions if I had added the corporate defendant, The Lorain Journal Company, as to whether you or they aided it or it aided you in these several conspiracies, that is to say, in [fol. 1019] restraint of trade, in restraint of interstate commerce, and interstate trade, to monopolize interstate trade and commerce, and in an attempt to monopolize interstate trade and commerce, or aid and abet each other in such attempt? Would your answer be the same?

A. My answer would be the same.

Q. Now, did you and they, and they with you, do any of those things, and enter into any of those conspiracies which I have set forth in those previous questions, seek to accomplish those several results in the manner set forth in the petition, such as: "in efforts to buy the Elyria Chronicle-Telegram?"

A. No.

Q. "In efforts to buy the Elyria-Lorain Broadcasting Company?"

A. No.

Q. "Making any agreement or agreements with the Lorain County Printing & Publishing Company that that company refrain from circulating copies of the Elyria Chronicle-Telegram in Lorain?"

A. No.

Q. "Or in attempting to persuade employees of the Lorain Sunday News and Elyria Broadcasting Station to leave their employment?"

A. No.

Q. Have you alone, or you in conspiracy with your company, The Lorain Journal Company or in conspiracy with [fol. 1020] these other individuals, or they with you, or with any other individuals and they with you, conspired or aided or abetted each other in the manner that I have outlined in these various questions by your advertising policy toward this radio station?

A. No.

Mr. Fulton: That is all.

Mr. Kramer: May I inquire of the Court as to whether he has possession of the letter from Mr. Rice to—

Mr. Fulton: Would you excuse me a moment, please?

Mr. Kramer: Yes.

Mr. Fulton: I think I would like to go one step beyond my last question just for the record.

By Mr. Fulton:

Q. Pursuant to that policy with regard to those who did advertise over the radio station, did you enter into any of the conspiracies I have outlined for the purposes I have outlined, with others, or they with you?

A. No.

(fol. [1021] Mr. Fulton: That is all.

Cross-examination of S. A. Horvitz.

By Mr. Kramer:

Q. I am looking for the letter, the 1948 letter. That's the one with the Sunday News. Do you have it, Mr. Horvitz?

A. Yes. (handing letter to counsel)

Q. Mr. Horvitz, I notice you have some other letters in the envelope from which you took that letter out. Do they have anything to do with the issues in this case?

A. Yes.

Q. Have you ever shown those to us?

A. Yes, the one letter just copies the letter that you have in your hand, and I have here the letter Bob Rice wrote to me in Florida and my answer to him.

Q. And that, of course, we have?

A. Yes.

Mr. Kramer: I would like to have this letter marked as an exhibit.

(Letter marked by Clerk Government's Exhibit 258)

Q. I hand you Government's Exhibit 258, Mr. Horvitz, and ask you to tell me whether or not that is the letter you received in 1948 from Robert H. Rice?

A. Yes, sir.

Mr. Kramer: If the Court please, I offer Government's [fol. 1022] Exhibit 258 in evidence.

Does the court wish to see it?

The Court: Yes. It may be received.

Q. Now, Mr. Horvitz, I am going to show you this packet, as Mr. Fulton referred to it, of correspondence between you and Mr. Bennett and/or Sears Roebuck marked Defendants' Exhibit K-1 and so on, and I am going to ask you if it isn't a fact that Mr. Bennett twice requested that you explain your policy to him in writing regarding the advertising of Sears Roebuck, and that on neither occasion did you comply with that request but instead insisted upon oral appointment. Is that correct?

A. I don't interpret his letters to me as explaining our policy to him. I did tell him that the matter could only be handled through an oral appointment.

Q. I want to call your attention to Defendants' Exhibit K-1 which says in part, "I would appreciate hearing from you as soon as possible as we are anxious to keep all our contracts up to date," and also to K-7 which says, "I outlined the situation in my letter to Mr. Bremer, and without getting it any more involved I thought you could give us your side of the story in a very few words. You can appreciate that it is not possible for us to make personal contacts with every newspaper that Sears advertises in, so will you please give us the story so we may clear it with our local [fol. 1023] store manager, Mr. Geiger, as soon as possible," and ask you if it isn't a fact that on two occasions he did ask you to set your policy down in writing and on both occasions, for whatever the reason may be, you failed to do so?

A. I see nothing in these letters that asks us to outline our policy, and the correspondence speaks for itself on that line.

Q. I think you are right in the second part of your answer, Mr. Horvitz. Now, I am going to show you Government's Exhibit 136, about which you were asked this morning by your counsel, and I am going to call your attention to the first whereas clause in Government's Exhibit 136. You notice it says: "Whereas the parties this day are contemplating entering into certain contracts." Then turn over, sir, to the next page, to Paragraph Fifth, where it says in the fifth line of Paragraph Fifth on Page 2 of Government's Exhibit 136, "But that in consideration of the first parties submitting certain obligations that remain temporarily unpaid, S. A. Horvitz shall personally and by separate instrument unconditionally guarantee" and so on. So

it is a fact, isn't it, that the guarantee that you executed was prerequisite to the fulfillment of the contract for the purchase of the Times Herald?

A. No, it isn't a fact.

[fol. 1024] Q. You still disagree?

A. I certainly do disagree, and I can explain to you exactly why if you care to know about it.

Q. Go ahead. I certainly do.

A. They presented two propositions, one of which where Brush-Moore were to buy one paper in Lorain and Mansfield, and the other one in which they were to sell. Under the Contract of December 5th we had the option to exercise as to whether we bought or we sold. They presented both propositions to me for signature. Theirs was already signed. After that contract was signed, then this contract was drawn up, and on that I personally guaranteed—I told them if they insisted on it we would make arrangements to pay it off and they said they didn't if I would personally guarantee that approximately $20,000, that would be all right. So this contract was after the one that is dated the 17th, and the date of the 17th is written in there.

Q. I think I understand you, but I'm not quite clear if you understand me. My question is do you have any present recollection that Brush-Moore interests would have sold the papers to the Mansfield Journal and the Lorain Journal if you had not guaranteed those obligations? Did they ever offer to do it?

A. They offered in that contract that you have got there of the 17th to sell the papers to the Lorain Journal and [fol. 1025] the Mansfield Journal Company. After that was signed up and all parties signed it, then this supplemental agreement was entered into.

Q. May I inquire as to the reason why you were willing to guarantee the notes if you already owned the paper and didn't have to do it?

A. Those were the notes of the Lorain Journal and the Mansfield Journal Company and under the contract of the 17th that you have there—not the one you have in your hand now—you will find a provision in there to the effect that all bills must be paid and the property delivered free and clear and that a chattel mortgage be given on the machinery and equipment.

Mr. Kramer: Read my question.

(Question read by Reporter)

A. We didn't already own the paper, and it wasn't a case of—it was either a case of paying that $20,000 or having me to personally guarantee the payment of the $20,000.

Q. That's all I was getting at, sir. You testified, did you not, that you formulated the policy of the Lorain Journal. Right?

A. Yes, sir.

Q. Now, do you formulate the policy of The Lorain Journal Company, an Ohio corporation?

A. Well, that's the—certain matters are formulated [fol. 1026] by directors of the company, and certain officers.

Q. Who are the directors?

A. The directors of the company, to the best of my recollection, are my brother, myself, and my wife.

Q. Speaking now of the paper as distinguished from the corporation, does your brother Isadore Horvitz participate in the formulation of the policy for the paper?

A. We discussed matters of policy, but the formulation and final decision is up to me as publisher.

Q. Then your brother was mistaken in his affidavit when he said, "I am an officer and director of The Lorain Journal Company and as such have participated in the formulation and carrying out of the advertising policy of the Lorain Journal published by that company." Was he mistaken?

A. No, I wouldn't say he was mistaken. He usually participated, and I said that a moment ago, in the discussions but, naturally, he has some influence in the formulation of the policy.

Q. Well, now, he is president of The Lorain Journal Company, the corporation, isn't he?

A. He is president of The Lorain Journal Company, yes, he is.

Q. But he is not the principal formulator of the policy of the paper. Right?

A. No, the publisher, as a rule, is the principal formulator [fol. 1027] of the policy of the newspaper.

Q. And you were president of The Lorain Journal Company, the corporations, up until what year?

A. Well, I can't tell without referring to the records.

Q. Well, about, are you able to estimate about? Have you got the minutes here?

A. No, I don't happen to have them here.

Q. We'll hold that for the moment, then, and if we have time during the recess—

A. I haven't got them here. They are in the [fol. 1028] office.

Q. At one time you were President and now you are not; is that it?

A. Now, I am the Vice President and the Secretary and the publisher.

Q. What was the reason for your resignation as President, if you remember?

A. Well, I don't just exactly remember that; possibly we thought it would be better to handle the affairs in that manner and my brother was elected President, I was made Vice President and Secretary, and I think he is the Treasurer, and I am the publisher.

The Court: What are the duties of the publisher?

The Witness: The publisher has charge of the operations of the newspaper and formulates and enforces the policy of the newspaper.

The Court: That is true regardless of the official position that he holds on the paper?

The Witness: Well, the publisher can—

The Court: Well, is that an official corporate office?

The Witness: It is an appointive office by the Board of Directors.

The Court: Were you so appointed?

[fol. 1029] The Witness: I was so appointed.

The Court: As publisher?

The Witness: As publisher, and have been so acting.

Q. And you don't remember when you were appointed publisher now?

A. No.

Q. And that you will try to find out some time between now and tomorrow morning, if you can, as to when you first became publisher?

You read off a list of advertisers, which was taken from the books, which you said was prepared under your supervision. You said those advertisers were advertisers who regularly advertised in both the Lorain Sunday News and the Lorain Journal?

A. I didn't say they regularly advertised in both papers, but I did say they advertised on many occasions, and just not spasmodically or, say, once in maybe a year or so. Yes, they advertised on many occasions. Put it that way.

Q. You don't mean to say since July 1, 1949 they have advertised more than once, did you, in the Sunday News?

A. Oh, yes, I can say since July 1 those that I have read have advertised more than once.

Q. More than once?

A. Oh, yes.

Q. Not more than twice?

A. Oh, I would say many of them are advertising prac-
[fol. 1030] tically every single week in the Sunday News.

Q. But you don't know how many of those you read off?

A. I can't tell you that without making an exact check, going back to that date and comparing their paper and our paper. It can be done if you want it.

Q. It will be done, but I don't think you will find that they do.

You are not able to estimate, are you, how many of the thirty-six issues of the Sunday News that have come out since July 1, 1949, have contained more than one or two ads of the advertisers whose names you read off?

A. Some of those advertisers, I would say, have appeared in the Sunday News practically every single Sunday.

Q. But you don't know how many?

A. I would say there were quite a few.

Q. Quite a few? Now, do you refer to both classified and display ads in the Sunday News?

A. I am referring particularly to display ads. I had nothing in mind with reference to classified.

Q. Now, how about this approach that was made to you by Mr. Metzenbaum—was it?

A. Yes.

Q. What is the name of that brokerage office?

A. He is with Halle's, investment brokers.

Q. Which Halle—Eugene?

A. I don't know. All I know is that he hold me he was
[fol. 1031] with Halle's, investment brokers. Get this—I didn't talk to him in any office in the Union Commerce Building. I ran into him in the lobby of the Union Commerce Building; and that was during the month of January some time.

Q. Can you remember more definitely when in January it was, and also anything you can do to refresh your recollection and give us that date?

A. The closest I can do is I went to Brown's Optical to have these glasses tightened, and coming down he ran into me and the conversation took place. It was some time during the month of January. I wouldn't say it was the fore part; possibly around the middle of January or latter part of January.

Q. Would Brown's have a record of when you went up to get the glasses?

A. No, I went to have them adjusted and they didn't charge me.

Mr. Metzenbaum would recall the conversation because he stopped me.

Q. Isn't it the fact the reason you weren't interested in purchasing radio station WEOL is that the Court of Appeals in the District of Columbia in the month of January had handed down a decision saying you weren't a fit applicant to hold the radio station?

A. No, sir, that is not a fact, because the conversation [fol. 1032] with Metzenbaum took place before that.

Q. Then we know it is before the 23rd day of January?

A. But that is not the first time he offered the radio station to us.

Q. Tell us about the other times.

A. He said he discussed the matter with my brother, whether he would be interested in purchasing the radio station last fall. When he ran into me he asked me if we were interested, and I said, "I don't think so." He said, "If you are, I will get you all the data, the trial balances, operating statements, and so forth."

Q. Do you remember any other conversation; do you remember a third conversation?

A. No. I mentioned that this morning in my testimony. With Mr. Metzenbaum?

Q. Yes.

A. I only had one conversation with Mr. Metzenbaum.

Q. You said that was not the only time and I assumed you meant somebody who said he represented WEOL, and

inferred he was attempting to sell you the radio station. Is that what you meant?

A. What I said was he told me he had talked to my brother about it. He asked me if my brother had talked to me about it, and I said, "Yes." My brother said he wasn't interested in purchasing the radio station.

Q. Now, we want the time when you talked with your brother.

[fol. 1033] A. Did you say you wanted the time?

Q. You say he talked to your brother about it once and you about it once. Is there any other occasion on which anybody you know of talked to you about purchasing WEOL, or talked to your brother about it, other than the two occasions you mentioned?

A. Off hand I don't recall. There may have been occasions but I don't recall.

Q. Now, you did apply, didn't you, that is, the Lorain Journal, for permission to construct a radio station?

A. Yes.

Q. And when was that?

A. That was back in '46, if I remember.

Q. What was the territory you promised the Federal Communications Commission you would serve if that license was granted?

A. We were going to cover Lorain and the territory right around the city of Lorain.

Q. How about Elyria?

A. I think that that would be included in that, although our proposition was to make it a real local station for the city of Lorain. That may have been included in the map, where it would reach out to.

Q. I hand you a document marked Exhibit E, engineering report in support of application of the Lorain Journal Company for a new station in Lorain, Ohio, and I show you [fol. 1034] the map that is attached to it and ask you if it doesn't refresh your recollection that you promised in your application if you were given a radio station you would serve territory within which Elyria is embraced?

A. I don't know. The map shows three different lines. I would have to read this engineering data to find out whether it covers the first line, the second line, or the third line. My recollection of it is that it only covered the first line there.

Q. Now, assuming it covered only the first line which you point to, does it include the city of Lorain?

A. Yes, it does.

Q. That is all I am trying to find out. Mr. Horvitz, at the time that the policy of the newspaper was activated—by "newspaper" I mean the Lorain Journal—towards those of its advertisers who advertised over the radio at that time—I take it we can agree it was 1948—do you know whether or not some of your advertisers desired to use radio advertising as well as newspaper advertising, concurrently?

A. I think I knew some time in 1948 that they did.

Q. As a matter of fact, isn't it true that 1945 or thereabouts you made a survey of your advertisers to determine whether or not they would be interested in advertising over your radio station if you got one?

A. I think we did make a survey to determine whether advertisers in Lorain would be interested in advertis-[fol. 1035] ing on a Lorain radio station.

Q. And you found that they were or were not?

A. We found that some of them were.

Q. Now, returning to 1948, isn't it a fact that you knew at that time that some Lorain Journal advertisers desired to advertise both over WEOL and in the Lorain Journal?

A. Yes.

Q. Will you describe to the court very briefly what you consider to be the function of newspaper advertising?

A. The function of newspaper advertising in a paper the size of ours is to deliver a certain message to the readers of that paper covering the sale of goods or services in that particular territory.

Q. Isn't it a fact that persons or corporations insert ads in your paper in order to sell the goods or services that are advertised?

A. Read that.

Q. It is a rather tough one.

A. No; I can't understand it.

Q. I say it is difficult to understand.

(Question read)

A. Yes.

Q. Now, what is the function of radio advertising, as you understand it?

A. Radio advertising is to sell, to help sell certain mer-
[fol. 1036] chandise or certain services, and to advertise brand names or trade names.

Q. Do you believe, Mr. Horvitz, that radio advertising may be used to supplement newspaper advertising?

A. Under certain circumstances and conditions, and provided they have a fair rate, they reach the proper territory and they conduct the affairs of that radio station in such a manner that it doesn't harm the advertiser in that particular locality in which the advertiser is located.

Q. Do you believe that a merchant may reach a greater number of customers by doing radio advertising than newspaper advertising?

A. I would say, as a whole, no. I would say the newspaper does a much better job for the advertiser than the radio station does.

Q. You said "As a whole," no. How about a part?

A. Well, I put it this way. As a whole and as a part, with possibly some few small exceptions.

Q. You have stated that you wanted the advertisers to give radio a fair test; that is right, isn't it?

A. Yes, sir.

Q. Don't you believe that the advertiser in the Lorain Journal could fairly get the value of advertising over WEOL by comparing the results which he achieved from newspaper and radio advertising combined, on the one hand, [fol. 1037] with those results which he achieved by advertising in the Lorain Journal alone?

A. I certainly do not believe that any advertiser who has been advertising in the Lorain Journal and continues to advertise in the Lorain Journal and then goes and starts, advertising at the same time, or advertises at the same times, on the radio station, is in a position to determine whether or not they are getting good results from the radio advertising. In fact, they may think they are when the credit is really due to the newspaper.

Q. And vice versa? Would you agree to vice versa? Do you think they could obtain a good idea of newspaper advertising if they were advertising both on the radio and newspaper?

A. No, I do not. I think if they wanted to determine what is a good medium for them, they stick on that medium, give

it a fair trial, then they could determine whether or not the results justified the expenditures.

Q. You agree, don't you, that there are many places in the United States where local merchants advertise both on the radio and newspaper concurrently?

A. There are places in the United States where they do that.

Q. It is your opinion that people who do that are not giving the radio and newspaper each a fair trial?

A. That all depends upon the circumstances, the locality, and what the local conditions are, and all that. I can only testify what I think, what I know to be the conditions [fol. 1038] in and around Lorain.

Q. I want to turn to your advertising policy that you talked about under oath in your affidavit. You say, "the Lorain Journal has refused and does reject patent medicine advertisements that appeal to sex, theatrical or night club advertisements that are sexy, and advertisements that appeal to so-called class distinction through the use of such terms as "selected clientele," advertisements that attack any religious sect, and advertisements that indulge in personalities or abuse and name-calling." My question, Mr. Horvitz, is whether or not you can now remember a single advertisement that you rejected since January 1, 1946 for any or all of those reasons.

A. I can't offhand remember it. But I know that all advertisers know that that is our policy. Yes, I can tell you one that was rejected, in the campaign.

Q. I didn't ask you what it was; I just asked you if you remembered one.

A. Yes, I can tell you about it. Do you want me [fol. 1039] to?

Q. Not yet. I now hand you what purports to be a photostatic copy of a letter of Mr. D. P. Self to Lang, Fisher & Stashower, dated August 13, 1949, and I will ask you to tell me whether or not that letter has any reference to recalling an advertisement for policy reasons?

A. Is it with reference to the radio.

Q. That is another radio letter?

A. Yes, that is a radio letter.

Mr. Kramer: I offer this in evidence, if the Court please, Government's Exhibit 259. I will read it to the Court.

The Court: It may be received.

Mr. Kramer: The letter reads: "Gentlemen: We are herewith returning order and copy for the Cleveland Browns advertisement. Very truly yours, Lorain Journal, D. P. Self, Business Manager."

Q. Mr. Horvitz, what was the reason for the objection to the advertisement referred to?

A. We were informed they were going on the radio and we treated them just like we would anybody else.

Q. You mean by radio—WEOL?

A. Yes.

Q. Now, can you remember rejecting an advertisement since January 1, 1946, for reasons of policy which I read [fol. 1040] to you from your affidavit, and if you do so remember, did you make the rejection in writing or orally?

A. No, that rejection I recall was made orally. I will tell you all about it if you want me to.

Q. I do, but not all about it, but as far as you think is pertinent.

A. In the campaign of 1948 there was an advertisement submitted to us by the opponent of Congressman Huber, in which there was name calling, and so forth. Frank Maloy rejected that advertisement. The Akron Beacon Journal carried that advertisement and last year Mr. Huber brought a libel suit against them for $100,000, and that suit is still pending.

Q. I take it you do not regard the advertisements of the Great Atlantic & Pacific Tea Company as name calling?

A. I don't know. Wait a minute—the A & P? No, I wouldn't say that was name calling. I would say that was perfectly legitimate advertising.

Q. Now, is it your position that your company assists your competitors and that is one of the reasons for your policy?

A. I didn't hear that.

(Question read by Reporter.)

A. Naturally we do not assist our competitors. We sell against them at all times and we try to explain to the buyer why we have a better product than our competitor [fol. 1041] has.

Q. Do you remember your affidavit dated October 18, 1948, Eva M. Bleutge notarized—she is your secretary?

A. She is our secretary.

Q. She is the one that was present when we had the conversation in your office and took down the notes?

A. She took down the notes.

Q. Do you remember you said in your affidavit, "The Lorain Journal has aided the circulation of certain other newspapers?"

A. That is true.

Q. Do you remember your brother testified the Cleveland News and Cleveland Press were the papers you aided?

A. Yes, sir.

Q. Was he telling the truth?

A. Yes, sir.

Q. Do you remember he also testified they were competitors of yours, don't you?

A. To a certain extent.

Q. He testified to that?

A. To a certain extent they are competitors in the dissemination of news.

Q. My question is do you remember that he, not you, Isadore Horvitz, so testified?

A. I remember his testimony.

[fol. 1042] Q. All right, was his statement true or false?

A. His statement was absolutely true, if you analyze it; and so is that affidavit of mine.

Q. That is exactly what I think.

A. Yes.

Q. Now, my question is, it is a fact, at least, in two instances you did assist your competitors?

A. Many instances we have assisted the Cleveland Press and Cleveland News in the distribution of their newspapers, and have done it for many years and are still doing it.

Q. Isn't it a fact you carry advertising of Cleveland radio stations in the paper?

A. We do at times and we also carry their logs for the radio stations.

Q. Isn't it a fact for some time you had a contract with WGAR?

A. We may have. If you have got it there I would say we have a contract.

Q. Now, will you name the competitors of the Lorain Journal whom you have assisted? You have named two, the Press and News. Who else?

A. Cleveland Press and Cleveland News.

Q. Remember any others?

A. Offhand I can't.

Q. Now, do you remember, sir, that you testified that it was your policy, and by that I assume you meant the policy [fol. 1043] of the Lorain Journal, not to print or accept for printing in the Lorain Journal advertising by Elyria or Cleveland merchants unless it was some small item that in no way conflicted with any of your advertisers in Lorain. Do you remember so testifying?

A. Yes, I did testify that way.

Q. Would you please state briefly how long this policy has been in effect?

A. It has been in effect as long as I have had any connection with the Lorain Journal; and that same policy was in effect long before I had any connection with the Lorain Journal.

Q. Do your employees know about this policy?

A. We have discussed that time and again.

Q. And your answer is yes?

A. Yes.

Q. And to the best of your knowledge do they consistently follow your policy?

A. Those are the orders and I think to the best—and I think they do consistently follow out that policy.

Q. Would it be fair to say the policy, as you describe it, is a policy of protecting the Lorain market?

A. I would say it is more for the protection of the Lorain market than it is for the protection of the Lorain Jour-
[fol. 1044] nal.

Q. Now, protection from whom?

A. Protection from outside advertisers so as to admit of the City of Lorain having a healthy retail community, or rather a community with healthy retail stores.

Q. Protection from outside advertisers, did you say?

A. Outside advertisers of merchandise.

Q. You weren't seeking, then, to protect the Lorain market from WEOL?

A. Yes, we were seeking to protect the Lorain market and Lorain merchants from WEOL.

Q. I wonder if your protection was a protection from competitors or protection from advertisers and competitors?

A. I would say the protection was from both; both the advertisers, and the ownership of the Elyria radio station.

Q. Is one of the reasons for the Lorain Journal's policy of protecting the Lorain market the elimination of competition from other advertising media?

A. Not necessarily, no. There are other advertising mediums that are being used by many of the advertisers in Lorain—bill boards, direct mail, many other kinds of advertising.

Q. Will you please read the question and tell me if you can answer yes or no after you have heard it?

[fol. 1045] (Question read by reporter.)

A. I think I answered that question.

Q. You say "not necessarily." I would like to know yes or no.

(Previous question read by reporter.)

A. It is not the elimination from any other advertising media, from any other advertising mediums.

Q. That is not my question. Please read it again.

(Previous question read by reporter.)

A. No.

Q. You remember these minutes, of course, these 1946 minutes?

A. Yes, I do.

Q. You remember you said, "Though presently enjoying a quasi-monopolistic position with respect to newspapers, it is pertinent to consider that such may not always be the case and that the company can always expect an attempt on the part of others to encroach upon its field of operations through establishment of competing newspaper or other advertising medium with resultant adverse effect on the company."

Mr. Horvitz, do you consider the construction of a radio station in the Lorain area which solicits advertising from Lorain merchants as an encroachment upon your field of operations?

A. No; anybody can open, start a newspaper or do anything they want. I do not consider that an encroachment.

[fol. 1046] They have a right to run a radio station there as any other place. We don't own that field.

Q. You disagree with your brother in 1946 when he wrote this?

A. No, he didn't say anything I disagree with. I don't think there is anything in there I have disagreed with.

Q. All right, sir. Do you agree with your brother when he said there was not room for more than one newspaper in Lorain economically speaking?

A. Economically speaking—

Mr. Fulton: I object to the question and some of these previous questions have been quite argumentative. I don't know that it makes a lot of difference, the witness seems to be taking care of himself all right, but they are argumentative. Even the last one—does he agree with somebody else.

The Court: The last question wasn't agreeing with somebody else. Read the question.

(Previous question read by reporter.)

The Court: It is a question whether he agrees with that policy or not. That question doesn't necessarily ask if he agrees with something his brother has expressed. The question is whether he agrees with that policy.

[fol. 1047] A. Yes, I agree with him.

Q. Does the Lorain Journal attempt to influence others to refuse to do business or to decline to do business with those persons who fail to follow your advertising policy toward the radio?

A. Would you read that?

(Question read by reporter.)

A. No.

Q. Does the Lorain Journal refuse to permit advertisers to mention their radio program in the Lorain Journal, radio program on WEOL?

A. Yes.

Q. How about other radio stations?

A. I don't know any case where any merchant ever advertised any program of theirs on any other radio station, to my knowledge. There may have been some cases, but offhand I can't recall it. If you have one there, let me see it.

Q. Yes, I think there is one every week, isn't there.

A. Possibly.

Q. United States Steel carries an advertisement, don't they?

A. Yes, we carry that ad, because we carry the program of WTAM. Yes, we carry this ad.

Q. What methods do you use to enforce your policy towards WEOL advertisers?

A. Just the method I outlined this morning. If you want [fol. 1048] me to, I will repeat it.

Q. Is it fair to say you decline newspaper ads from Lorain merchants who advertise over WEOL?

A. It is, if they have a contract. We recognize the thirty-day term provision of that contract. After that provision, after that term expires, then we do not accept their advertising.

Q. Where do you consider the boundary line to be between Elyria and Lorain for enforcement of this policy of Lorain-Elyria advertisers? Is it the city limits, southern city limits of Lorain or northern city limits of Elyria?

A. No; that would be what we consider the Elyria trading area. For instance, there may be a store right outside of the city limits of Elyria. We would consider that the city limits of Elyria. The stores, what we consider our Elyria stores, those stores we will not accept their advertising in the Lorain Journal.

Q. But if it is between Elyria and Lorain you do?

A. I don't know if we ever have or not. If we did, it was a case where we thought they were in the Lorain district and not the Elyria district.

Q. Does the Lorain Journal have certain favorite enterprises inside or outside the Lorain market area which are given exceptional treatment in so far as your advertising policy is concerned?

A. No.

Q. Well, do you know of any exceptions to this adver-[fol. 1049] tising policy?

A. With reference to what, Mr. Kramer?

Q. Not breaking down the Elyria-Lorain separate trading area?

A. I don't understand your question.

Q. You said, generally speaking, you didn't take an advertisement from merchants outside of Lorain where there was a conflict.

A. What we consider the Lorain market; for instance, Amherst, which is a separate city. We consider Amherst as the Lorain market. Avon, Lorain market.

Q. How about Vermillion?

A. Vermillion, we would accept ads, because people from there come in to trade with us, but we accept very few ads, just scattered ads here and there; but we do have good circulation in Vermillion and good circulation in Avon, and those we really consider the Lorain market.

Q. But you are clear on Elyria, there are no exceptions made to your policy?

A. To my knowledge there are no exceptions.

Q. Who decides when an exception is to be made to your policy?

A. That would be possibly right at Lorain. If there is any question they would call me about it.

Q. Supposing an advertiser lists an Elyria 'Phone number in his ad, can that be done consistently with your [fol. 1050] policy?

A. I don't think so. It may have been done, but not to my knowledge.

Q. It wouldn't be to your knowledge?

A. In fact I would say if it was put up to me I would tell them not to accept the ad.

Q. And how about where there are both Elyria and Lorain 'phone numbers?

A. Then I would tell them not to accept the ad with the Elyria 'phone number in it or Elyria address. In fact we have had but few in the past.

Q. But it is always rarely?

A. Yes.

Q. You didn't find any in your search?

A. We tried to find all we could. We made a thorough search. In fact you have had 1600 exhibits from [fol. 1051] us.

Q. Mr. Horvitz, the latest copy of your paper that I have is Saturday. You read your paper every day, don't you?

A. I used to read it very thoroughly until I was tied up in court here practically all day.

Q. I didn't catch your answer to the question whether you try to read the Lorain Journal every day.

A. I do if I have got the time, I try to read it every day

but now I have been tied up in court here I haven't had the time to do it.

Q. Well, you will be able to go back to it soon, I think. I am going to hand you—I have to stand up here, Mr. Horvitz, so show you these because you kindly send us this copy but we only received one copy of the Lorain Journal. This is an issue of the Lorain Journal for Saturday, March 11th, isn't it?

A. Yes.

Q. Now I am going to point out some ads to you, and then I am going to ask you to answer specific questions. Do you see here the ad for the Avon Sand & Gravel Company carrying an Elyria 'phone number and an Avon 'phone number?

A. Well, I would say if I had known about that ad it never would have appeared there.

Q. How about Amherst; you said that was or was not in your trading territory?

A. Amherst is in our trading territory, and as I say, if [fol. 1052] I had seen this ad, if it was put up to me, I would have refused that ad with that telephone number in.

Q. Take this paper—this is going to take awhile, sir. Here we have several advertisers on Page 12 combined into one single ad, apparently, and you will notice the Concrete Machinery Corporation of Elyria, Ohio, mentioned there. Right.

A. Yes, but here you have got a development between Lorain and Elyria, and under those conditions we probably would accept that ad. They never asked me about it, but this is a development between Lorain and Elyria.

Q. Do you know whether the Concrete Machinery Corporation made any payment directly or indirectly to the Lorain Journal for this ad?

A. I don't know. I doubt it. I imagine it came from the parties there.

Q. Let's turn to the next page. How about Vermillion?

A. Vermillion we consider that as in our trading area.

Q. Here is an ad for Lehman & Johnson, real estate, and that carries an Elyria 'phone number.

A. This ad advertises a piece of property on Vermillion River, not in Elyria, and I would say I would accept that ad.

Q. Even though the office is in Elyria?

A. Even though the office is in Elyria, if he has a

[fol. 1053] piece of property for sale, a farm, near Vermillion.

Q. Now, you would say the same thing about this Sandusky real estate man, is that it?

A. Well, that's a Vermillion proposition too.

Q. The same thing?

A. Yes.

Q. Now look down here, on Page 10, we have, do we not, ads for the Lorain House Lumber Company in Lorain and a Vermillion Lumber Company in Vermillion. That is consistent with your policy because that is in Vermillion?

A. Oh, yes, sure, in Vermillion.

Q. Now, here we have an ad for baby chicks, the Wilford Hatchery in Elyria.

A. Well, the chances are there is no such hatchery anywhere near and about Lorain—that is, no hatchery in Lorain, so if this doesn't conflict with any Lorain advertiser we would accept that ad.

Q. How about Stone's Dance Studio in Elyria? Don't you have any dance studios in Lorain?

A. I don't know whether we do or not. I don't know.

Q. Let's turn the page. Here we have that WTAM ad again, de we not?

A. Yes, that's WTAM.

Q. U. S. Steel ad?

[fol. 1054] A. U. S. Steel.

Q. Let me show you the telephone book for Lorain, Mr. Horvitz, and see if it doesn't refresh your recollection as to dance studios in Lorain.

A. I say there may be some. I don't know of any.

Q. All right. That's good enough. Is the Birmingham Exchange on the Lorain Telephone system?

A. I don't know.

Q. Well, do you know where Birmingham is?

A. Birmingham, I think; is west of Lorain, as I recall it.

Q. Is it part of the Lorain market or isn't it?

A. I think it is.

Q. That's what I thought.

A. But I am not certain.

Q. You will notice the telephone directory carries a Kip ton Hatchery, doesn't it, the Lorain book?

A. Where do you see Kipton?

Q. Under Hatcheries, sir (indicating).

A. Hatcheries, Kipton. Well, Kipton is west—no Kipton is southwest of Elyria. Kipton is southwest of Elyria.

Q. That's out of your trading area?

A. Yes.

Q. Isn't that southwest of Elyria?

A. Yes, you are right.

Q. That's what I thought. Well, now, I am going to show you the Lorain Journal for Monday, January 9, 1950, and I am going to ask you if it doesn't contain an ad by [fol. 1055] Peerless Baby Wash in Elyria?

A. Yes, it does.

Q. Now, look at the Lorain Journal for January 5, 1950 and see if that doesn't carry a baby diaper service in Lorain, Ohio.

A. Yes.

Q. You regard that as consistent with your policy, or did your people make another mistake?

A. I don't know about making mistakes, but I would never have run this Peerless ad.

Q. On page 14 of the Lorain Journal for January 5 there appears, does there not, an ad from Goodman's Home Furnishings, listing both an Elyria and a Lorain store?

A. And that was contrary to the instructions that I issued.

Q. Here we have January 24, 1950, the Lorain Journal newspaper, and we have Allen's in Lorain and Elyria, shoes, I think it is, yes it says "Buy buckskin."

A. That ad should not have appeared that way as far as my policy is concerned.

Q. Here we have the January 5, 1950, Lorain Journal Georgia Huntington's ad listing both Elyria and Lorain numbers.

A. The same answer applies to that. My orders were that order should not have been carried that way.

Q. Now this is an example of the A. & P. ad which you [fol. 1056] think is not name-calling. Is that it?

A. Oh, I think it's a very good ad.

Q. Here is another one for January 21, 1950; Stone's Dance Studio in Elyria.

A. I told you before that should not have been carried, that ad; it's contrary to our policy.

Q. Even though on January 18th, 1950 you ran an ad for the Arthur Murray Studio?

A. I told you they should not have run the ad; it's contrary to the policy I have outlined and the things we have adhered to. When you consider that of the thousands and thousands of advertisers we have, you can pick out just a few isolated cases of that kind, even then that doesn't make it right.

Q. Here we have the Lorain Journal for January 12, 1950, and we have Ostrow's Red Cross Shoes, Lorain and Elyria, don't we?

A. Yes, and as I told you, that is contrary to our policy.

Q. Here we have an ad, do we not, from the Bankers Life & Casualty Company for Cleveland, Ohio, for hospitalization appearing in the Lorain Journal for January 16, 1950?

A. I don't know whether there are any of the same kind or firms in Lorain or not. If there are not, we would take an ad of that kind, if they were not in direct competition with some one in Lorain of that same kind.

Q. Look at the Lorain Journal for January 20, 1950, an ad [fol. 1057] for Mrs. L. Fairfield of Broadway, Lorain, Ohio. That's an ad starting out, "Don't worry about hospital bills."

A. That's about the same company, the Great White Cross Plan. It's the Great White Cross Plan that you are talking about, this ad is for the same company, it's the same woman, it refers to the same sort of plan.

Q. That's correct, it is the same kind of plan.

A. It is so worded.

Q. I want you to look very carefully at it and see if one doesn't advertise the Great White Cross Plan—

A. Both do.

Q. —for Cleveland and the other the Great White Cross Plan for Lorain? They both are salesmen, it is true, for the same company. But isn't that a fact?

A. I don't know whether they are for the same company or not. Maybe they checked it before they ran that ad.

Q. Here we have an ad, "Hair, warts, and moles permanently removed by electrolysis." That's an advertisement from Elyria, an Elyria outfit, is it not?

A. That's right. Whether we have anybody that removes hair, warts, and moles located in Lorain, I don't know.

Q. Here we have the Lorain Journal for January 21, 1950, and you have an ad stating "A salute to the American

Legion,'' and the following advertisers, did they not, contributed to that ad—

[fol. 1058] A. I don't know who paid for that ad.

Q. You don't know?

A. No, I don't know who paid for that ad; I can't tell you that.

Q. Where is King Avenue, do you know?

A. No, sir.

Q. Here is ''Hair, warts and moles,'' an ad run by someone—

A. I said I don't know whether they had anybody in Lorain.

Q. Doesn't that refresh your recollection that they do?

A. I don't know whether they do or not.

Mr. Kramer: Let me have the 'phone book for Lorain, please, Mr. Rashid.

Q. What is the name here for the Hair, Warts, and Moles advertisement I just showed you?

A. Mrs. Nell Varouse.

Q. You will notice she carries a Lorain telephone number, doesn't she, that lady you just mentioned?

A. That seems to be there, yes.

Q. And she advertised in the Lorain Journal, didn't she?

A. Yes.

Q. I hand you the Lorain Journal, page 29, for December 9, 1949, and I will ask you if that page doesn't carry two advertisements from Elyria merchants, one the Lake Erie Radio Sound Company, and the other the Great Lakes Plate & Glass Company?

A. Yes, it does, but I don't know why it was carried [fol. 1059] there.

Q. How about the Lorain Journal, page 28 of that same issue? That carries two ads from Elyria merchants, doesn't it?

A. The question is where that came from. This was with reference to a Lorain store. Let me see that other part of it. This was announcing the formal opening of a beautifully newly decorated store of some kind. Now, that being the case, the chances are the contractors who worked on that building were carried in the advertisement as a part of this entire advertising campaign, and there was nothing

wrong with it. That's done in every city in the country. That's entirely different from what your statement was before.

Q. I agree it's different. I am merely trying to find out what the policy is.

A. On those ads that you have been talking about recently, on those there were contractors that were engaged in that work for the remodeling of some building in Lorain, and where that is done, certainly we would carry ads for the people.

Q. Even though they are in Elyria?

A. Even though they are in Elyria, or Cleveland, or anywhere else. And that's done by all newspapers.

The Court: We'll take a recess at this time.

[fol. 1060] (Short Recess taken.)

Mr. Fulton: If your Honor please, I think it was generally understood that permission was granted, but to be absolutely certain about it, part of the exhibits we have had marked thus far, I think there was about seven or eight, will require copies. If we may be permitted to take them out at the end of the session, we will have them back with the copies in the morning.

Mr. Kramer: No objection.

Q. Mr. Horvitz, here we have the Lorain Journal for Friday, January 13, 1950. I didn't pick that date because it was Friday the 13th, but you see you have got an ad for a house trailer in Lorain and for a concern that sells trailers, the Lakehurst Trailer Sales in Elyria, and the two ads are right next to each other. Do you see that?

A. Yes, sir.

Q. Is that another mistake or violation of your policy by your subordinates?

A. It certainly is. They should not run that Elyria ad.

Q. This is the only ad I am going to show you, Mr. Horvitz, that was run before this suit was filed. It's for November 9, 1948. By the way, you have not changed your policy since November 9, 1948, up until the present date, have you?

[fol. 1061] A. No, sir.

Q. November 9, 1948, you notice at the top there is an ad for used cars, Red's Motor Sales in Elyria, and then right

below it there are three or four ads for used cars from Lorain merchants. Do you see that, sir?

A. I see that, and the Elyria ad should not be placed, in view of my instructions.

Q. Now, the reason I showed you just this one in 1948, if you recall, isn't it a fact that it was around November of 1948 that you were turning down advertisements from Mr. McConnell and other automobile dealers who advertised over WEOL?

A. We turned down ads for Mr. O'Connell—

Q. McConnell.

A. For Mr. McConnell, I don't recall any other ads of Lorain merchants that were turned down for automobiles.

Q. Now, you were here when Mr. Driscoll and Mr. D'Andrea testified, weren't you?

A. Yes.

Q. And you remember they testified that they were in the music business.

A. I think I remember that.

Q. By the way, you came to Elyria, you said, in 1913?

A. Yes.

Q. You came from outside the State of Ohio?

A. No, I came from Cleveland, Ohio; born and raised in Cleveland, in 1913 I moved to Elyria, and in 1930 I moved [fol. 1062] back to Cleveland and Shaker Heights, the home we live in now.

Q. Do you remember whether you have ever been in either Mr. D'Andrea's store or Mr. Driscoll's store?

A. To the best of my knowledge, no.

Q. Now, I show you the Lorain Journal for Thursday, January 26, 1950, and you will see that your subordinates have run an ad from a Cleveland music store which reads "Accordion Import Company" and so on, is that right?

A. That is right, but that may be a case where that particular item is not being handled in Lorain. If so, it would not interfere with any of our Lorain merchants.

Q. Is it your instructions to your assistants or employees that they should check into that before they decide to accept the ad?

A. They are supposed to, yes. We are trying to protect our Lorain merchants to the best possible extent that we can.

Q. I am handing you a newspaper, the Lorain Journal for Thursday, January 12, 1950, page 28, and I will ask you to

turn to that page and tell me whether or not it isn't a fact that on that day you carried two ads for the sale of lumber from both Vermillion and Lorain?

A. Well, we would, that we consider in our trading territory.

Q. How about Avon?

A. Avon is in our trading territory.

Q. How about Westlake?

[fol. 1063] A. Westlake; I don't know just where that is.

Q. Can you see this map over there? You don't sell any papers in Westlake. This is Westlake (indicating on map). It is almost due east of Lorain and due west of Cleveland.

A. I see that.

Q. Do you now know whether you consider Westlake part of your trading area?

A. I don't think so.

Q. That was my understanding, because you will notice you don't sell any papers by news stand or carrier in that city. Well, now on Tuesday, December 27, 1949, the Lorain Journal ran an ad for the sale of apples in Westlake, didn't it?

A. Oh, on farms like that we would carry ads from farms that are anywhere near Lorain or anywhere near our trading territory there, yes.

Q. Here I show you the Lorain Journal for Friday, January 20, 1950, and I ask you to tell me whether or not it isn't a fact you carried an ad for night clubs or taverns that day for both Elyria and Lorain, one from Elyria and one from Lorain.

A. This Stop 14 Lake Avenue may be very close to Lorain, possibly as close to Lorain as Elyria. This one, of course, is in Vermillion. Sure, that's in our trading terri-[fol. 1064] tory, we would carry that ad.

Q. That I understand, yes. Here is an ad from Storm Sales Company listing Lorain, Elyria and Grafton telephone numbers, printed in the Lorain Journal for January 18, 1950. Is that another mistake by your subordinates?

A. It isn't a case of mistake, it's just a case where they disobey the definite instruction they received not to carry Elyria telephone numbers in the advertising or Elyria addresses.

Q. Here we have the Lorain Journal for Wednesday, January 25, 1950, page 13, and we have an ad from the Elyria

Roller Arena, and here we have the Lorain Journal for Saturday, December 17, 1949, page 7, and we have an ad for the Stone Dance Studio and the Coliseum Roller Skating in Lorain.

A. The Coliseum Roller Skating is in Lorain.

Q. How about the Elyria Roller?

A. That one I don't think is even in Elyria, but this ad should not have been carried.

Q. You mean the Elyria ad?

A. The Elyria ad. This is in Elyria, this is opposite the Bendix Westinghouse, which is out on Ridge Road there and as I recall it is way outside the city limits of Elyria.

Q. It's nearer Elyria than Lorain?

A. Yes, and this should not be carried according to my [fol. 1065] instructions.

Q. Isn't it possible that the reason you carried that ad was because of the trouble you had with Mrs. Stevens over radio advertising.

A. No, no. You showed me yourself we carried an ad for Mrs. Stevens, so it can't be for that reason, because here is her ad.

Q. All right. Here is the Lorain Journal, page 10, for January 7, 1950, and you notice you have an ad there of P. A. Walker, an auctioneer, in Elyria. Right?

A. Those auctioneers operate all over the county. They hold auctions in Lorain like they do all over the county. I know, I lived there, and I know how they operate, and we would carry an ad for an auctioneer because they operate all over the county.

Q. You mean because they occasionally physically come to Lorain, is that it?

A. They come to Lorain to conduct auctions, they come to the different farms that are near Lorain, they operate all over the county. In fact, some of them even operate outside the county, so that in that particular case if it was put up to me I would say "carry that ad."

Q. Calling your attention to the same issue, same page, on the bottom, you will notice an ad for "Brick-krete Builders, Elyria." Was that an ad consistent with your policy?

A. Well, if brick-krete is not being handled, if it is a prod- [fol. 1066] uct not being handled in Lorain, we would carry that ad, and we should, in accordance with our policy.

Q. How about Huron, is that in your trading territory?

A. Huron is west of Lorain, and I would say we would carry certain kinds of ads from Huron, Ohio.

Q. What kind, do you know?

A. Well, that would all depend on the ad. For instance, any type of farm products, certain special things, I think we would carry the ad because we do, as I recall it, have some circulation in Huron. At least, that's west of Lorain.

Q. You say you have some circulation there?

A. I think so. I am not certain, we would have to check that.

Q. I hand you Government's Exhibit 119, being the ABC report on the Lorain Journal, and I will ask you whether or not this refreshes your recollection that you don't sell any newspapers in the City of Huron (handing Government's Exhibit 119 to witness).

A. This doesn't show any circulation in Huron—just a minute. Huron County—was that an ad for Huron County or City?

Q. I haven't asked you about any ad yet.

A. Here you see we have some small circulation.

Q. In Huron County?

A. In Huron County and we have got in the balance of the county very little. The report doesn't show exactly where.

Q. But how about the City of Huron, Ohio? Isn't it a [fol. 1067] fact that you don't circulate there?

A. This doesn't show whether we do or not.

Q. Well, if you did wouldn't it show on there?

A. If it is included in the balance of the county, and if Huron is in Huron County, but it is a small amount of circulation, very small.

The Court: Is Norwalk the county seat of Huron County?

The Witness: I don't know.

Mr. Fulton: Yes, it is.

The Court: Huron is near Sandusky.

Mr. Kramer: Your Honor, it's between Sandusky and Vermillion and is in Erie County.

A. This does not show that there is any circulation in Huron.

Q. Yet on December 28, 1949, page 11, the Lorain Journal ran an ad for the Shamrock, Ruggles Beach in Huron, didn't you?

A. We would carry advertising for some of those resort places that are near Lorain, or near Lorain County, for those resort places, and that seems to be one of those resorts. It says "Ruggles Beach."

Q. Pretty cold out there, isn't it, in December?

A. Well, they say in that advertisement "Come to the Shamrock." That's Ruggles Beach Route 2 and 6.

Q. You know it wasn't to be held on the beach, but to be held in a building on the beach?

A. Well, that a resort proposition. I don't know what [fol. 1068] they are going to do there. That's a resort, and we would carry that ad and we should carry it.

Q. Now, Mr. Horvitz, you remember that a while back I asked you if you agreed with your brother's position that there wasn't room economically speaking, for more than one newspaper in Lorain, you said you did.

A. I agreed with him that there was not room economically speaking for any more than one good newspaper in the city of Lorain for the afternoon field.

Q. Daily newspaper.

[fol. 1069] A. Daily newspaper.

Q. Now, was that always your position or have you changed your mind about that?

A. Oh, I have changed my mind because it cost me a lot of money to get that experience to change my mind.

Q. You used to think otherwise, is that it?

A. How is that?

Q. You used to think otherwise?

A. Oh, yes, I used to think there was room in many cities for more than one newspaper, but I learned through experience that wasn't so.

Q. Do you remember the year when you changed your mind?

A. I changed my mind sometime in the early '30's.

Q. Do you think the Plain Dealer is a reputable newspaper?

A. Yes, it is.

Q. Mr. Horvitz, don't you remember that you testified under oath in April, 1930 that, "it is always best to have two newspapers in a city; then one can't get drunk with

power, like Hoiles was, and go about ruining people's reputation''?

A. That I remember, that very distinctly. It was in the early thirties I changed my mind. I think as far as Hoiles was concerned, that statement I made in the early thirties still applies.

Q. But you don't think that as long as the Lorain Journal is the only daily newspaper that is published in Lorain there is any danger that it will become drunk with power?

A. No, it has not become drunk with power; as long as [fol. 1070] we have anything to do with it, it will not, and the record of the newspaper shows it,—the quality of the paper, what it stands for, shows it is not drunk with power and never will become so.

Q. Mr. Horvitz, do you remember before I started to show you all these copies in 1949, December, and January, 1950, of the Lorain Journal, I asked you if you read the newspaper regularly and you said you did except during the trial of this lawsuit. Do you remember that answer you gave?

A. I remember the question and the answer.

Q. In view of all these errors we talked about this afternoon, do you still say you read the paper carefully?

A. Well, I wouldn't say I go through every single advertisement or every classified ad, but I would say I read the paper carefully on practically every day I am home, or rather, in the city here.

Q. Do you remember testifying that you checked the advertisements regularly of those advertisers who appeared in the Sunday News, or did I misunderstand what you did say?

A. We get the Sunday News. It is sent from the Lorain office. I go over it and see just what the News contains, what comics they have in that sheet.

Q. Did I hear you say you do check to see who the advertisers in the Sunday News are?

A. I glance through the paper to see just what adver-[fol. 1071] tising they are carrying, and naturally that shows who the advertisers are.

Q. Well, did all these ads that I have just shown you, which you say were violations of the policy, did you expect all those or did it come as a surprise to you?

A. It is no surprise to me. We have made mistakes. We have thousands of advertisers; we carry a great many thousands of advertisements. It is only natural that some slip by. I don't think anyone checks every single issue of that paper. So it is not a surprise that some times some of the men, in their enthusiasm, will let an ad like that get through.

Q. You say "in their enthusiasm." What do you mean?

A. That means when a salesman or solicitor will go out and take an ad, an ad which may have Elyria 'phone numbers, or it may be an ad from some of the Elyria merchants, or an ad about wart removers, or something like that, without seeing if we have any wart removers in Lorain.

Q. Have you been able to find since this lawsuit started a single piece of paper written before we filed the lawsuit, or the Attorney General filed the lawsuit, which states the advertising policy of the Lorain Journal?

A. In writing, no.

[fol. 1072] Mr. Kramer: No further questions.

Mr. Fulton: If your Honor please, in order that we may be reasonably certain about things, we want to offer in evidence the Exhibit A, the letter of Mackey to WEOL. That has been received, I think there is no doubt about it, but I want to be certain about it.

Mr. Kramer: No objection.

The Court: Well, the clerk has a record of the exhibits that have been received.

Mr. Fulton: I wanted to go over them to maker certain. I have them all.

The Court: Do you have them checked, Mr. Wilson?

Mr. Wilson: Yes, your Honor. I have all of them received except Defendants' Exhibit F.

The Court: My recollection is that all the exhibits have been received except the list of advertisers filed by someone else.

Mr. Fulton: As a matter of fact, I think this letter Exhibit E was rejected.

Mr. Kramer: I don't think you ever offered it. If the court please, I object to it on the ground that it is irrelevant. We don't claim the Lorain Journal or any of its officers attempted to purchase the Lorain Sunday News, and did [fol. 1073] not so allege in the Complaint.

The Court: I thought you withdrew the question.

Mr. Fulton: I came back to it, that is why I am coming to that exhibit now. You recall I put the question to Mr. Horvitz whether the newspaper had ever been offered to him, and he said yes. In view of that I would like to offer Exhibit E and also Exhibit D. D is a letter to which E is the answer.

The Court: Well, what was the letter and the answer?

Mr. Fulton: They were all attached together with the envelope on the bottom, all of them in the packet marked E. Now I am having marked D the letter from Mr. Rice to Mr. Horvitz; and E, Mr. Horvitz' answer. In view of the other answers given I will re-offer D and E.

The Court: They will be received. I suppose the purpose of offering them is to negative the attempt to monopolize?

Mr. Fulton: So that they have all been received except F, and I shall remove these exhibits, physical exhibits over the night for photostating.

By Mr. Fulton:

Q. Showing you these exhibits, Mr. Horvitz, G to J, representing the ads placed in your paper by the Lorain Sunday paper, I direct your attention especially to the last Exhibit, J. That exhibit reveals that that particular ad—[fol. 1074] what was the ad, first?

A. "Drivers wanted, with own cars to work part time in evening; good opportunity to make extra money for dependable persons. 'Phone 3202 and ask for Mr. John Moyer."

Q. That particular Exhibit J called for two insertions of that ad?

A. Yes.

Q. How many insertions were there?

A. We ran one insertion and we were ordered to kill it, so we ran it on the 17th of August.

Q. It was killed?

A. It was killed after it ran once.

Q. And after killing that do you know whether or not a blank space appeared in your newspaper where the ad had been run on the first running?

A. No, sir.

Q. There was some evidence to that effect?

A. That is not true.

Q. Would you mind showing that, if it is necessary, by the paper here?

A. Yes. And also I will show on the 18th there was another ad from the Sunday News that appeared, had been ordered for two times and with the same names, and that ad appeared on the 18th. This ad was also killed.

Q. While you are looking for that let me put this question: Are you able to tell from the notation "killed" the circumstances under which that ad was eliminated [fol. 1075] the second time?

A. Yes.

Q. Would you relate that?

A. An advertiser comes in and asks us—

Q. No; as to that one?

A. At that time the original, the order was placed to be run twice. It ran once and then we were called and asked to kill the ad, not to run it again, the same day.

Mr. Kramer: Objection, your Honor. I think the witness is testifying to hearsay. I would like to ask him questions to bring that out.

Mr. Fulton: I will be able to do that. I asked him if he knew about that particular ad and he said yes.

Q. Now, do you have the paper there that will show whether or not on the killing of that particular one, Exhibit J, there was a blank space in the paper where it had been run on the one occasion?

A. (Producing book of copies of paper) There is no blank space here on the 18th. On the other hand, on that same date there is also an ad from the Lorain Sunday News which appears on here.

Q. And that appears on page 13?

A. 13 of the Lorain Journal dated August 18, 1948.

Q. And this one ad that was prepared for another ordering?

[fol. 1076] A. Yes.

Mr. Fulton: That is all.

Mr. Kramer: No cross examination.

Mr. Fulton: Now, with that and the offer of those exhibits, the defense rests.

Mr. Kramer: If the court please, the plaintiff will prob-

ably have one rebuttal witness tomorrow, who will take about ten minutes. I might say it will be a member of the Government staff in this case.

(Discussion as to time of argument, and agreed between court and counsel that each side would have an hour and a half for argument.)

(Thereupon an adjournment was taken to 10:00 o'clock [fol. 1077] A.M. of the following day.)

TUESDAY, MARCH 14, 1950, 10:00 O'CLOCK A.M.

Mr. Baker: If the Court please, last night the defendants had photostatic copies of all the exhibits made. There was only one mistake made, we didn't get the right copy of the maps, Exhibit C, and we would like to have the Court's permission to take Exhibit C out again today, and to substitute photostats for those documents that were removed from the defendants' files.

The Court: All right.

Mr. Kramer: If the Court please, counsel have already agreed with the Clerk that tomorrow morning will be the time for making sure that the Court's exhibits and the official copy of the exhibits are proper and agreed upon. I am returning at this time the several notes relating to the acquisition of the Lorain Times Herald and the Mansfield News which Mr. Horvitz, I believe it was, handed me yesterday, and I am also returning the balance of the papers produced by and pursuant to the subpoena duces tecum [fol. 1078] which papers we did not introduce in evidence relating to that same transaction.

After we examined the transcript last night, we found that, at least we think, that the matter of the Government's rebuttal can be handled much more expeditiously, in a matter of five or six minutes, if we call Mr. Samuel Horvitz rather than one of our own persons.

The Court: Very well.

Cross Examination of Samuel A. Horvitz.

By Mr. Kramer:

Q. Mr. Horvitz, have you had occasion within the last 24 hours to examine the minute book of The Lorain Journal Company to determine approximately when you resigned

as president and Mr. Isadore Horvitz, your brother, succeeded you?

A. Yes.

Q. Would you please tell us about when that happened?

A. My brother I. Horvitz was elected president, I was elected vice-president and publisher on the annual meeting of the Board of Directors, March 6, 1934.

Q. Do you now have any—

Mr. Fulton: Pardon me. Is that clear to your Honor? In reading that he referred to his brother as I. Horvitz [fol. 1079] and referred to himself as "I". It might not be confusing to your Honor, but it might be confusing in the record.

Q. You were president of The Lorain Journal Company until sometime in the first part of 1934, at which time your brother, Mr. Isadore Horvitz, succeeded you, is that right?

A. Yes.

Q. Yesterday at Page 1009 of the transcript the following question and answer occurred, Mr. Horvitz, the question by me and the answer by you: "Q. What was the reason for your resignation as president, if you remember? A. Well, I don't just exactly remember that; possibly we thought it would be better to handle the affairs in that manner and my brother was elected president, I was made vice-president and secretary, and I think he is the treasurer, and I am the publisher."

Do you now remember anything further that you think would be of interest to the Court as to why that change was made?

A. No, I don't.

Q. Now, is the publisher of the Lorain Journal and the person who publishes the paper the same thing?

A. Well, the Lorain Journal Company, the corporation, publishes the paper.

[fol. 1080] Q. I see.

A. The publisher, as I testified yesterday, has certain duties in connection with the paper.

Q. But it is true, then, that The Lorain Journal Company, the corporation, gets out or publishes the papers, is that it?

A. That is my understanding of it.

Q. Now, you remember your counsel asked you yesterday a question that appears on Page 927 of the transcript: "Q. How long have you been publisher of the two papers,

the one in Mansfield, and the Lorain Journal, the one involved here? A. Oh, many years. I don't know the exact date.''

Can you remember when you first acquired an interest of any kind, financial, that is, in the Lorain Journal Company?

A. No, I can't.

Q. Would it be fair to say it was between 1920 and 1929?

A. I couldn't answer that correctly.

Q. Do you personally have the controlling stock interest in the paper, in the corporation?

A. At the present time?

Q. Yes.

A. No.

Q. Your brother has?

[fol. 1081] A. My brother has.

Q. Did you ever have the controlling stock interest in the paper?

A. I think at one time I did, but I am not certain as to whether I did.

Q. Was there at one time a time when the Horvitz family had an interest in the Lorain Journal but did not control it, that is, didn't have the majority of stock?

A. I think so, but I am not certain of that. That happened many, many years ago.

Q. But on one thing you are clear, that the Horvitz family had the controlling stock interest in The Lorain Journal Company as early as 1930?

A. No, I don't think so.

Q. As early as 1932?

A. I don't think so. I think the controlling interest was after that date, but just what date it was I do not recall.

Q. Do you still have the publishing plant of the Times Herald intact?

A. No.

Q. Did you merge it with your plant or did you sell that?

A. We sold most of the equipment, took some of the equipment that we use in our present plant.

Q. Did you sell the real estate on which the building was [fol. 1082] housed?

A. We never purchased the real estate of the Lorain Times Herald. All we purchased was the machinery and equipment.

Q. Not only didn't you purchase the real estate—

A. Just a minute. I'll say we purchased the equipment, machinery, circulation and the matters set forth in the contract.

Q. Mr. Horvitz, is there anything you could be looking at in that minute book that might clear up this question of whether you had a controlling stock interest, you or any members of your family, in the '30s, early '30s?

(Witness looks at minute book.)

Q. Mr. Horvitz, I have found it, you can stop looking. I am going to show you Plaintiff's Exhibit 137, Section 3. That is the contract between The Lorain Times Herald Company and The Lorain Journal Company and others.

Mr. Fulton: What is the date of that?

Mr. Kramer: It is dated December 17, 1932. I ask you to read aloud to the Court the last sentence of Section 3 of that contract.

A. The last sentence says: "Said S. A. Horvitz is the sole owner of all the shares of said The Lorain Journal Company and said Mansfield Journal Company." I would like to explain that.

Q. I wish you would.

A. That contract was made by Brush-Moore without our [fol. 1083] being present when the contract was drawn up. That is one of the propositions I explained yesterday, they were supposed to prepare two sets of contracts, one was where we bought and the other where we sold. When I saw that part I called their attention to the fact I was not the sole owner. They said for the purposes of this agreement it was perfectly satisfactory to go through without making any change, because, they said that they are the sole owners of all the stock in the company, and I remember distinctly calling their attention to that but they said it made no difference in the contract.

Q. My question, and what I hope will be the last one, is: aren't you fairly sure on thinking back, Mr. Horvitz, that in December, 1932 you, together with members of your family, or corporations which your family controlled, did have the controlling stock interest in the company?

A. No, I don't think we did.

Q. Do you remember the time when you made that deal

with whom you had to consult? Did you have stockholders' meetings? Could we look that up and see if the stockholders—

A. I consulted with Mr. David Gibson, my brother was there, I was there, before and after we made this deal.

Q. Who is Mr. David Gibson?

A. Mr. David Gibson was at one time the owner and [fol. 1084] publisher of the Lorain Journal.

Q. Would this be fair, would you agree to this statement, that in December of 1932 The Lorain Journal Company majority stock was owned or controlled by one or more of the following groups: the Horvitz family and the Gibson family?

A. I would say—

Q. One or both, I should have said.

A. I would say offhand that the majority of stock was was owned and controlled by David Gibson in 1932. That's to the best of my recollection.

Q. And sometime between 1932 and can we say 1946—

A. Oh, yes.

Q. Sometime between 1932—

A. Pardon me. I answered your question before you finished it.

Q. You are right, it was a badly put question. Sometime between 1932 and 1946 the Horvitz family got control?

A. Yes, sir.

Q. Of The Lorain Journal Company?

A. Yes, sir.

Q. Could I see that minute book just a moment, please?

A. (Handing minute book to counsel.)

Q. Who is Hugh Martin?

A. Hugh Martin was at one time the auditor that handled [fol. 1085] the books of the Lorain Journal and at one time acted as secretary of the corporation, and I think he occupied another office—I'm not certain whether he acted also as treasurer, but I am almost certain he acted as secretary. But the books will show that.

Mr. Kramer: If the Court please, my associate advises me that he can determine within five to ten minutes when the Horvitz family or Samuel Horvitz got control of the company by examining a memorandum from the files of the Federal Communications Commission, a copy of which we

have upstairs. I frankly at this time am not clear whether it is important or not. At the same time, I hesitate to say we are through until he gets that information. There is one of two ways of proceeding in order to save time, one would be to go ahead with the argument and see if we could get together on it, or to wait the five or ten minutes until we obtain the memorandum. I apologize to the Court. I thought this man would know it.

The Court: What do you think is the bearing of the exact year?

Mr. Kramer: The only bearing it has on the matter [fol. 1086] that I can think of now is on the question of conspiracy.

The Court: Well, at any rate, they were owners in 1946, were they not?

Mr. Kramer: Oh, yes, there is no doubt about that.

The Witness: Yes, we were.

Mr. Fulton: I might say to your Honor that I was interested in Mr. Kramer's statement a moment ago that he wasn't sure how important it was, because it just happened that Mr. Baker and I had a little quiet discussion as to whether it had any bearing. I explained to him that at the beginning of this interrogation Mr. Kramer thought it would have some bearing on the subject matter of conspiracy and I wasn't going to object, in view of that.

The Court: Is there any difficulty in arriving at an understanding, should it have any bearing, that counsel can agree that whatever the record discloses may be stipulated as to the date when the Horvitz family acquired ownership in the Lorain Journal, the controlling ownership?

[fol. 1087] Mr. Kramer: If we can agree that the record shows it, I am sure there will be no difficulty stipulating it.

Mr. Fulton: I must say on that subject, since I don't know what bearing it has, and I don't know the underlying facts, that I don't care to stipulate something about which I know nothing. You say you are going to get the facts from some other proceeding?

Mr. Kramer: I think we have it upstairs.

Mr. Fulton: Well now, do you mean a proceeding that will show what the fact is or what some Court concluded it was?

Mr. Kramer: No, what Mr. Horvitz testified to.

Mr. Fulton: Oh, I see.

Mr. Kramer: Or some representative of the corporation.

The Court: Well, what is the precise question now?

Mr. Kramer: The precise question is the date at which Mr. Horvitz or the Horvitz family acquired controlling stock interest in The Lorain Journal Company.

[fol. 1088] The Court: Can't you approximate that, Mr. Horvitz?

The Witness: I would say it would be sometime in the middle—1935, 1936, 1937, 1938, somewhere in the '30s.

Q. And you are quite sure it was after you acquired the Lorain Times Herald?

A. Oh, yes, it was long after we acquired the Lorain Times Herald.

Q. From whom did you purchase the stock to acquire the controlling stock interest after 1932?

A. From David Gibson.

Mr. Kramer: I think that's all we need.

The Court: Does that answer your question, satisfy the record for whatever the reason for it may be.

Mr. Kramer: It does.

[fol. 1089] The Court: All right.

Q. You don't have any recollection now of having testified before the Federal Communications Commission that it was in 1930 that you acquired control?

A. No, sir, I do not.

Mr. Kramer: I, unfortunately, only have my notes of the testimony here. That is all, if the court please.

Mr. Fulton: If the court please, we have here those exhibits that were proferred by the government, the balance sheets that were rejected as evidence that have been proferred.

Mr. Kramer: Exhibits 141 to 146. How about 1949?

Mr. Fulton: I have that here. 256 is the balance sheet; 257 is the profit and loss statement.

Redirect Examination of S. A. Horvitz.

By Mr. Fulton:

Q. You have handed me proferred Exhibits 141, 142, 143, 144, and 145, exhibits which have been proferred by the government, and those are balance sheets for what years?

A. Exhibit 142 is a balance sheet of the Lorain Journal Company dated December 31, 1946.

Exhibit 141 is a statement of income and deficit for the year ended December 31, 1946.

[fol. 1090] The next one, Exhibit 143, is the balance sheet of The Lorain Journal Company dated December 31, 1947.

The next one, Exhibit 144, is the statement of income and surplus for the year ended December 31, 1947.

The next one, Exhibit 145, is a statement of income and surplus for the year ended December 31, 1948.

The next one, Exhibit 146, is the balance sheet dated December 31, 1948.

Q. In addition to those proferred exhibits which you are now presenting to the court, did you bring additional ones for which a request was made?

A. Yes, sir.

Q. I will show you Exhibit 256, proferred by the government. What is that?

A. That is the balance sheet of the Lorain Journal dated December 31, 1949.

Q. And Exhibit 257?

A. Exhibit 257 is statement of income and surplus of the Lorain Journal Company for the year ended December 31, 1949.

Q. Those last two were the two requested in addition to the earlier ones you just mentioned?

A. Yes, sir.

Mr. Fulton: As I understand, these exhibits have been objected to as proferred by the government and are to remain under seal for whatever use they might be put [fol. 1091] to on an appeal, if there is one; so I leave them right here.

The Court: Give them to the clerk so they may be sealed. They are to be here in court under seal and used by

the reviewing court if that court should believe that they are material.

Mr. Fulton: That is all.

[fols. 1092-1165] Testimony closed.

[fol. 1165a] PLAINTIFF'S EXHIBIT No. 1—Filed March 14, 1950

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

Washington 25, D. C.

13487

10/47

Docket No. 7778
File No. BP-4536

Docket No. 7779
File No. BP-4756

Docket No. 7780
File No. BP-4865

In re Applications of LEONARD A. VERSLUIS (WLAV) Grand Rapids, Michigan

MICHIGAN BROADCASTING COMPANY, Battle Creek, Michigan

ELYRIA-LORAIN BROADCASTING COMPANY, Elyria, Ohio

For Construction Permits

[fol. 1165b] 37. The applicant has offered the use of its proposed facilities on a sustaining basis to the representatives of 80 educational, civic, governmental, agricultural, patriotic, charitable and religious organizations located in Elyria and the surrounding towns of Lorain, Oberlin, Wellington, Amherst, and Grafton. The representatives of 37 of these organizations testified in substance that a need exists in the above communities for the proposed broadcast station and that the said organizations desire to broadcast over such station programs relating to their respective activities.

[fol. 1165c] Conclusions

[fol. 1165d] 6. It is apparent from the foregoing, and the Commission finds, that a grant of the applications of both the Elyria-Lorain Broadcasting Company and the Michigan Broadcasting Company, would achieve the following results: (a) Provide a new local broadcast station to Elyria, Ohio, a city with a population of approximately 25,000, which is at present totally without local broadcast facilities, and an additional primary service to Lorain, Ohio, a city with a population in excess of 44,000, which is also without a local broadcast station; and (b) provide a second, competing local broadcast service to Battle Creek, Michigan, a city with a population in excess of 43,000, in which is located only one broadcast station, having very limited coverage and constituting the only source of primary service thereto during nighttime hours.

[fol. 1165e] Filed March 14, 1950

PLAINTIFF'S EXHIBIT NO. 2

List of Sports Events Broadcast from WEOL Originating Outside the State of Ohio

April 19, 1949 to March 18, 1950

Baseball: 79 Baseball games including double-headers carried by WEOL on a commercially sponsored basis originated outside the state of Ohio, and carried by phone lines from the ball park to the basic station. Games broadcast originated in:

New York, N. Y.
Chicago, Ill.
St. Louis, Mo.
Detroit, Mich.
Washington, D. C.
Philadelphia, Pa.
Boston, Mass.

Hockey: 30 commercially sponsored Hockey games also originated outside the state of Ohio, and carried by phone

lines to basic station. The games broadcast originated from:

Pittsburgh, Pa.
Indianapolis, Ind.
Springfield, Mass.
Buffalo, New York.
New Haven, Conn.
Hershey, Pa.
St. Louis, Mo.

These 109 games were broadcast to WEOL listeners from nine states and the District of Columbia.

[fol. 1165f] Filed March 14, 1950

PLAINTIFF'S EXHIBIT No. 56

William G. Ehrlich

Grosse Pointe 30, Mich.

October 18, 1949.

Station WELL, Elyria, Ohio.

DEAR SIRS:

I listen to your program every morning and would like you to read the following ad on the air. I do not expect a buyer the first time, but I will fulfill any conditions that you might stipulate.

I have a Kold Hold deep freeze which will reach fifty below zero in about 20 minutes. It is 14′ long, 3′ wide, with a freezing compartment 2′ x 1½′ x 4′ with 4 holds. Electrical characteristics 220/440, 220 volts, 3 phase, 60 cycle, with a 3 horsepower compressor equipped with a Delco Remy automatic set controls. The unit costs $1,300.00 and I will sell it for $485.00. It is on wheels.

I want to thank you for your attention and I am sure that someone in the community will be able to use it.

Yours very truly, William G. Ehrlich.

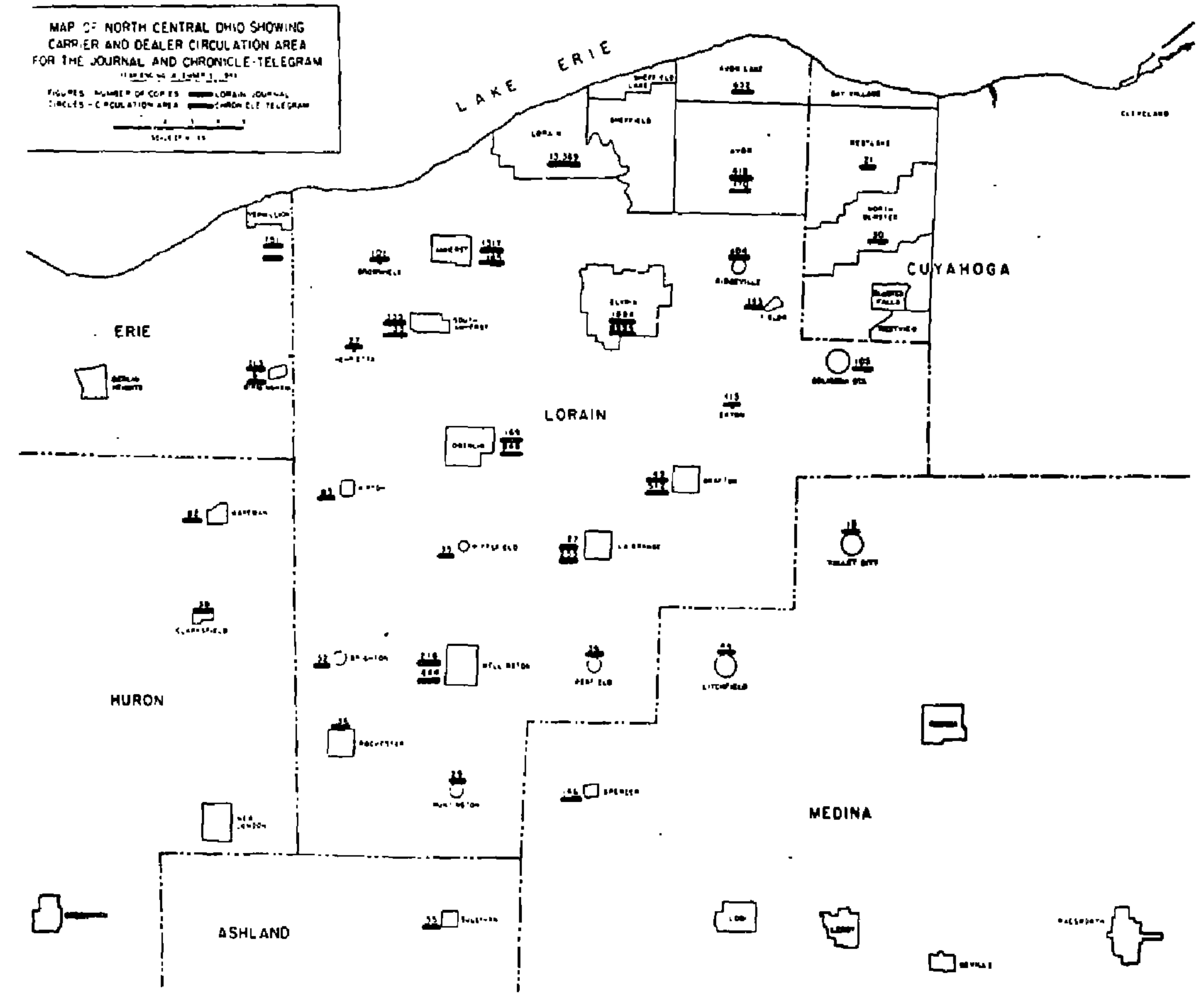
603 St. Claire, Grosse Pointe 30, Michigan.

[File endorsement omitted.]

PLAINTIFF'S EXHIBIT NO. 117

MAP OF NORTH CENTRAL OHIO SHOWING
CARRIER AND DEALER CIRCULATION AREA
FOR THE JOURNAL AND CHRONICLE-TELEGRAM

FIGURES - NUMBER OF COPIES — LORAIN JOURNAL
CIRCLES - CIRCULATION AREA — CHRONICLE TELEGRAM



472

PLAINTIFF'S EXHIBIT NO. 119 - Filed March 14, 1950

AUDIT BUREAU OF CIRCULATIONS
CHICAGO

AVERAGE NET PAID

1st	Quarter	1948	20,338
2nd	"	1948	20,644
3rd	"	1948	20,676
4th	"	1948	21,102

AUDIT REPORT—NEWSPAPER

1. The Lorain Journal and Times-Herald

2. Lorain — Times-Herald 1879

3. Ohio — 4. Year Estab. Journal 1921

5. Published Evening.

6. Report for twelve months ending Dec. 31, 1948

7. General Newspaper.

8. Daily average net paid circulation by zones and distribution methods:

	Evening
CITY ZONE	
Carrier Delivery by independent carriers filing lists with publisher	11,649
Dealers and Carriers not filing lists with publisher	1,476
Street Vendors	26
Publisher's Counter Sales	
Mail Subscriptions	
Total City Zone (Population* 44,125)	13,151
RETAIL TRADING ZONE	
Dealers and Carriers not filing lists with publisher	6,805
Mail Subscriptions	286
Total Retail Trading Zone (Population* 69,881)	7,091
Total City & Retail Trading (Population* 114,006)	20,242
ALL OTHER	
Dealers and Carriers	108
Mail Subscriptions	340
Total "All Other"	448
TOTAL NET PAID excluding Bulk (For bulk sales, see Paragraph 10)	20,690

Case No. A-6513 Civil
PLAINTIFF'S EXHIBIT
No. 119

FILED
MAR 14 1950
At ... o'clock ... M.
C. H. WATHEN, CLERK
U.S. District Court, N.D.O.

9. NET PRESS RUN AND TIME OF EDITIONS:
(THESE FIGURES INCLUDE SPOILED IN DISTRIBUTION, FREE COPIES, UNSOLD AND ALLOWANCES.)
Evening Issue for Thursday, December 16, 1948:

Edition	Press Time	Date Printed	Issue Dated	Net Press Run	Sales Release See Note	Approx. Distribution City Zone	Retail Zone	All Other
1st	1:54 PM	12/16	12/16	21,955	A-C	63%	34%	3%

Note: A Immediate sales release in City.
C Sales release on arrival at destination in Retail Zone and All Other.

10. DAILY AVERAGE BULK SALES IN ALL ZONES: Evening 1.
Represents copies sold to a business concerns at 3¢ per copy, distribution being made by the purchaser.

*1940 Census (Also see Paragraph 28-a).

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11. Daily average unpaid distribution:

	Evening
Arrears over Three Months	
Short Term Subscriptions in Arrears	
Credit Subscriptions in Arrears	
Total Arrears	
Service Copies, Local Advertisers, Employes, etc.	27
Advertising Agencies, Complimentary, Samples, etc.	158
Other Not Qualifying as Paid	
Single Issue Sales in Bulk not qualifying as Bulk (See Par. 28-b)	25
Total Arrears, Service Copies, etc.	210

12. (a) TERRITORY INCLUDED IN CITY ZONE IN PARAGRAPH 8 is the corporate limits of Lorain, in Lorain County, Ohio.

12. (b) AREA INCLUDED IN RETAIL TRADING ZONE IN PARAGRAPH 8 is, with the exception of city zone, Lorain County; and in Erie County, the village of Vermilion.

EIGHT LARGEST TOWNS IN RETAIL TRADING ZONE:

Elyria	Oberlin	Amherst	Wellington
Ayon Lake	Avon	Vermilion	North Ridgeville

13. PRICES:

	BY MAIL IN RETAIL TRADING ZONE				BY CARRIER IN CITY ZONE					SINGLE
(a) Basic prices:	1 Yr.	6 Mos.	3 Mos.	1 Mo.	1 Yr.	6 Mos.	3 Mos.	1 Mo.	1 Wk.	COPY
Evening only	9.00	5.00	3.00	1.25	15.00	7.80	3.90	1.30	.30	5¢

(b) Basic price by mail in city zone:
None of record.

(c) Basic price by mail in "all other" zone:
Same as by mail in Paragraph 13 (a).

(d) Basic price to R.F.D. subscribers in retail trading zone:
Same as by mail in Paragraph 13 (a).

(e) Basic price to R.F.D. subscribers in "all other" zone:
Same as by mail in Paragraph 13 (a).

(f) Basic price by carrier in retail trading zone:
Same as by carrier in Paragraph 13 (a).

(g) Basic price by carrier in "all other" zone:
Same as by carrier in Paragraph 13 (a).

(h) Basic price to motor route subscribers in retail trading zone:
None of record.

(i) Basic price to motor route subscribers in "all other" zone:
None of record.

(j) Special reduced prices:
None of record.

(k) Prices higher than basic:
By mail in "all other" zone: in Ohio outside of Lorain and adjoining counties, 1 year $11.00, 6 months $6.00, 3 months $3.50, 1 month $1.25; outside of Ohio, 1 year $12.00, 6 months $6.50, 3 months $3.50, 1 month $1.25.

(l) Prices lower than basic:
None of record.

14. WERE RETURNS ACCEPTED OR ALLOWANCES MADE FOR UNDELIVERED, LEFT OVER AND UNSOLD COPIES?
Publisher's declared policy as to returns was nonreturnable to dealers in city zone, retail trading zone and "all other" zone.
No allowances for undelivered, left over or unsold copies were found to have been made during the period covered by this report.

ANALYSIS OF CARRIER AND MAIL SUBSCRIPTION SALES (NEW AND RENEWAL)
For Period Stated in Paragraph 6.

15. PREMIUM, COMBINATION AND SPECIAL OFFERS:
None of record.

16. CLUBS:
None of record.

17. CONTESTS INVOLVING SUBSCRIPTION CONTRACT:
None of record.

18. COUPON CONTESTS NOT INVOLVING SUBSCRIPTION CONTRACT:
None of record.

19. INSURANCE:
None of record.

23. Arrears as at December 16, 1948:

	CITY ZONE		RETAIL TRADING ZONE			ALL OTHER	
Evening	Carriers	Dealers	Carriers	Dealers	Mail	Dealers	Mail
Arrears under 3 months	None	None	None	None		None	None

25. DISTRIBUTION IN TOWNS RECEIVING 25 OR MORE COPIES IN DETAIL BY COUNTIES, AS WELL AS THE TOTAL ONLY FOR TOWNS RECEIVING LESS THAN 25 COPIES DAILY.

Evening, December 16, 1948.

Occupied Dwelling Unit figures - 1940 Census. Also see Paragraph 28-a.

The listing below gives gross distribution for one day only and is greater or less than the net paid average for the period covered by this report by the following percentages:

City Zone	1.66% greater
Retail Trading Zone	4.41% greater
All Other	0.67% greater
GRAND TOTAL	2.58% greater

The "adjusted figures" of county totals appearing below have been arrived at by decreasing (or increasing) the listed county total figures by the appertaining percentages as above set forth. These adjusted county totals will, therefore, approximate the net paid average for the period covered by this report.

*"Balance in County" is comprised of the distribution in towns receiving less than 25 copies which is not identified with the towns, townships or minor civil divisions listed.

STATE COUNTY TOWN	OCCUPIED DWELLING UNITS	CARRIERS AND DEALERS	MAIL	TOTAL
OHIO				
LORAIN COUNTY	30,228			
Lorain	11,325	13,369		13,369
		(Adjusted Figure		13,151)
BALANCE IN COUNTY	18,903			
Amherst		1,317	75	1,392
Avon		418	15	433
Avon Lake		632	7	639
Brownhelm		101		101
Elyria		1,684	26	1,710
Grafton		49	10	59
La Grange		27	2	29
Lorain Rural Routes		1,424	17	1,441
Oberlin		169	39	208
South Amherst		335		335
Wellington		216	27	243
*BALANCE IN COUNTY			4	4
TOTAL LORAIN COUNTY (EXCLUSIVE OF LORAIN)		6,372	222	6,594
		(Adjusted Figure		6,315)
CUYAHOGA COUNTY	336,519			
Cleveland			31	31
*BALANCE IN COUNTY			19	19
TOTAL CUYAHOGA COUNTY			50	50
		(Adjusted Figure		50)

(The Lorain Journal and Times-Herald, Lorain, Ohio, Page #4)

1165 k

STATE COUNTY TOWN	OCCUPIED DWELLING UNITS	CARRIERS AND DEALERS	MAIL	TOTAL
OHIO (Cont'd)				
ERIE COUNTY	12,042			
Birmingham		113		113
Vermilion		751	59	810
*BALANCE IN COUNTY			26	26
TOTAL ERIE COUNTY		864	85	949
		(Adjusted Figure		914)
HURON COUNTY	9,920			
Wakeman			28	28
*BALANCE IN COUNTY			10	10
TOTAL HURON COUNTY			38	38
			(Adjusted Figure	38)
MISCELLANEOUS COUNTIES				
UNDER 25 COPIES			59	59
			(Adjusted Figure	59)
TOTAL IN OHIO		20,605	454	21,059
			(Adjusted Figure	20,527)
ALL OTHER STATES				
MISCELLANEOUS COUNTIES				
UNDER 25 COPIES			153	153
			(Adjusted Figure	152)
MILITARY SERVICE -				
DESTINATION UNKNOWN			10	10
			(Adjusted Figure	9)
FOREIGN				
UNDER 25 COPIES			2	2
			(Adjusted Figure	2)
SUMMARY				
TOTAL OHIO		20,605	454	21,059
" ALL OTHER STATES			153	153
" MILITARY SERVICE - DESTINATION UNKNOWN			10	10
" FOREIGN			2	2
GRAND TOTAL		20,605	619	21,224
		(Total Adjusted Figure		20,690)

28. EXPLANATORY:

(a) Re Paragraph 8:

Publisher states that based on information obtained from Chamber of Commerce, city zone population increased to 52,562 as of September 1, 1947. Increase is not reflected in population figures in Paragraph 8, nor in occupied dwelling unit figures in Paragraph 25.

(b) Re Paragraph 11:
Single Issue Sales in Bulk not qualifying as Bulk, averaging 25 copies per issue, represents copies in excess of 1% of total net paid circulation excluding bulk (See Chapter A, Article II, Section 1 (f)).

* * * *

[fol. 1165n] Filed March 14, 1950

PLAINTIFF'S EXHIBIT No. 132

Minutes of a Special Meeting of the Board of Directors of The Lorain Journal Company, Held at 913 Midland Building, Cleveland, Ohio, on December 17, 1948, at 3:00 o'Clock, P. M.

Waiver of Notice of Special Meeting of Board of Directors

We, the undersigned, constituting a majority of the Board of Directors of The Lorain Journal Company, do hereby waive notice of and consent to the holding of a special meeting of the Board of Directors of said company to be held at 913 Midland Building, Cleveland, Ohio, on the 17th day of December, 1948, at 3:00 o'clock P. M. for the transaction of such business as may properly come before said meeting.

I. Horvitz, S. A. Horvitz, Hattie M. Horvitz.

Pursuant to the foregoing waiver of notice, a special meeting of the Board of Directors of The Lorain Journal Company was held at the time and place indicated. All of the Directors were present in person. I. Horvitz, President, presided and S. A. Horvitz, Secretary, kept the minutes.

The President stated that the first order of business was consideration of bonuses for the year 1948. After careful consideration of individual cases, it was moved, seconded and unanimously carried that bonuses in the aggregate amount of $42,700.00 be paid, including $13,000.00 to S. A. Horvitz and $3,000.00 to I. Horvitz.

The President next reported upon the status of the Company's program, the various aspects of which reviewed in detail. He stated that it now appeared that construction of a new building and radio station, acquiring of suitable sites, purchase of new machinery and equipment, furniture and fixtures, and investment in a newsprint manufacturing plant, would involve a cash outlay in excess of $1,200,000.00.

S. A. Horvitz, Secretary.

I. Horvitz, President.

[fol. 1165o] PLAINTIFF'S EXHIBIT No. 139—Filed March 14, 1950

Minutes of a Special Meeting of the Directors of The Lorain Journal Company Held at the Office of the Company, on Friday, February 24, 1933

Pursuant to the call of the President, Directors of the Lorain Journal Company met on Friday, February 24, 1933, at 2:00 o'clock, P. M.

On motion duly made, seconded and approved by the affirmative vote of the directors of the Company, it was—

Resolved that in accordance with agreement with the Mansfield Journal Company that $300,000.00 of the $800,000.00 shall be considered a direct liability of this company and the remainder, namely $500,000.00 to be considered a direct liability of the Mansfield Journal Company.

It was further resolved that the Board of Directors have carefully considered and examined the assets acquired from the Lorain Times-Herald and it is their judgment the following valuations shall be placed on the books for such assets:

Supplies	$	650.95
Autos & Trucks		325.00
Cores		80.23
Paper		1,759.92
Ink		86.62
Metal		1,444.00
Type		15.00
Press		30,000.00
Furniture & Fixtures		1,301.95
Plant Equipment		32,815.00
Insurance Accounts Receivable		597.71
Contract with the proprietors of The Lorain Times-Herald to refrain from competing or entering into any competitive newspaper enterprise in the territory of The Lorain Journal Company for a period of five years from Dec. 17, 1932		230,923.62
		$300,000.00

It was further resolved that the action of the President and Treasurer in the issuing of a five year note to David Gibson to replace the several notes held by him, in the amount of $261,900.00, be approved.

On motion, duly seconded, the meeting adjourned.
S. A. Horvitz, President. I. Horvitz, Secretary.

[fol. 1165p] Minutes of a Special Meeting of the Stockholders of The Lorain Journal Company held at the office of the company on Friday, February 5, 1934.

All stockholders were represented either in person or by proxy.

It was unanimously agreed that the date of the annual meeting of the Stockholders and Directors be the first Tuesday in March of each year.

Motion made and carried unanimously that the by-laws of the company be changed so that the Board of Directors shall consist of three members.

On motion, duly seconded, the meeting adjourned.
I. Horvitz, President. Hugh ——, Secretary.

(Here follows 1 Photolithograph, side folio 1165q.)

new

Salesman Marshall

ADVERTISING CONTRACT with THE LORAIN JOURNAL COMPANY

LORAIN, OHIO, ...August12...., 19....48

The Lorain Journal Company

Gentlemen:—

You are hereby authorized to publish advertising for the undersigned in *The Lorain Journal & Times-Herald* as follows:.....Five (5).....agate lines or more of Classified.... Advertising to be used .....Daily..... for a period of....1 Year from Above Date., for which...I.....agree to pay $.....0.07..... per agate line.

Accepted By

THE LORAIN JOURNAL CO.

Joseph R. Kelly

Advertising or Business Manager

1165-q LORS

Account is due and payable when invoice is rendered. If account is fully paid on or before the 10th of the month following service, provided there is no unpaid balance, discount of 2% will be allowed on the amount of the bill.

It is expressly understood that by this contract Advertiser is to use and pay for the space as herein contracted for, and failure to use such space or any part thereof, does not relieve Advertiser from full payment for the same.

The Lorain Journal Company is privileged to revise or reject any advertisement which is deemed objectionable, either in its subject matter or phraseology, or opposed to public policy or the policy of the paper.

This contract shall cover only the advertising of the party signing this contract.

In case of error in an advertisement The Lorain Journal Company will, if requested, furnish Advertiser with a letter so worded as to relieve the Advertiser from responsibility for the error. The Lorain Journal Company does not assume responsibility for an error in an advertisement other than above stated.

This contract may be cancelled by the publisher upon thirty days written notice.

The Lorain Journal Company shall suffer no liability for the insertion of an advertisement without cuts, unless same have been furnished at some time as copy. Advertising copy is to be furnished to the publisher not later than 2 P. M. two days preceding publication.

The rearrangement or resetting of any portion of an advertisement after proof of the original copy has been submitted will be subject to a charge of $2.00 per hour for each man employed in making the change. Special position for advertising is not guaranteed.

This contract is made subject to government orders, war, material shortage, labor conditions and other causes over which you have no control.

VERBAL AGREEMENTS ARE NOT RECOGNIZED

SIGNED: Marshalls Auto Service

BY G. Marshall

Address 1125 E North Ridge road

1165-q

4824

[fol. 1165r] PLAINTIFF'S EXHIBIT No. 140

Filed Mar. 14, 1950

November 2, 1948.

Mr. G. W. Marshall
Marshall's Auto Service
1125 E. North Ridge Road
Lorain, Ohio

Dear Mr. Marshall:

You are hereby notified that your advertising contract dated August 12, 1948, is cancelled 30 days from this date.

Sincerely, The Lorain Journal, D. P. Self, Business Manager. DPS: jel.

PLAINTIFF'S EXHIBIT NO. 147 - Filed March 14, 1950

AUDIT BUREAU OF CIRCULATIONS
CHICAGO

AVERAGE NET PAID

2nd Quarter	1948	282,824
3rd "	1948	281,633
4th "	1948	290,086
1st "	1949	293,369

(See Par. 28-a)

AUDIT REPORT—NEWSPAPER

1. The Cleveland Press — Cash No. 26995 Civ
PLAINTIFF'S EXHIBIT No. 147-Add
2. Cleveland
3. Ohio — 4. Year Estab. 1878
5. Published Evening
6. Report for twelve months ending March 31, 1949
7. General Newspaper.

8. Daily average net paid circulation by zones and distribution methods:

AVERAGE NET PAID CIRCULATION

	Evening
CITY ZONE	
Dealers and Carriers not filing lists with publisher	
Street Vendor	
Publisher's Counter Sales	
Mail Subscriptions	
Total City Zone (Population* 1,108,335)	237,299
RETAIL TRADING ZONE	
Dealers and Carriers not filing lists with publisher	46,746
Mail Subscriptions	107
Total Retail Trading Zone (Population* 709,854)	46,853
Total City & Retail Trading (Population* 1,818,189)	284,152
ALL OTHER	
Dealers and Carriers	1,912
Mail Subscriptions	893
Total "All Other"	2,805
TOTAL NET PAID excluding Bulk (For bulk sales, see Paragraph 10)	286,957

FILED
MAR 1 1950
At ... M.
C. B. [illegible], CLERK
U.S. District Court, N.D.O.

9. NET PRESS RUN AND TIME OF EDITIONS:
(THESE FIGURES INCLUDE SPOILED IN DISTRIBUTION, FREE COPIES, UNSOLD AND ALLOWANCES.)
Evening Issue for Tuesday, March 15, 1949:

Edition	Press Time	Dated Printed	Issue Dated	Net Press Run	Sales Release See Note	Approx. Distribution City Zone	Retail Zone	All Other
1st	10:21 AM	3/15	3/15	31,087	A-C	66%	27%	7%
2nd	11:13 AM	3/15	3/15	29,871	B-C	22%	78%	0%
3rd	1:03 PM	3/15	3/15	204,786	A-C	91%	9%	0%
4th	3:59 PM	3/15	3/15	39,457	A-C	99%	1%	0%

For publisher's policy in respect to advertising carried, see Paragraph 28-b.

Note: A Immediate sales release in City.
B Held for release at 2:00 PM in City.
C Sales release on arrival at destination in Retail Zone and All Other.

10. DAILY AVERAGE BULK SALES IN ALL ZONES: Evening 160.

Represents copies sold to local newspapers for departmental use at $4.25 per hundred copies and to a local business concern and baseball club at 5¢ per copy and 4-1/4¢ per copy, distribution being made by the purchasers.

*1940 Census.

1165 s

STATE COUNTY TOWN	OCCUPIED DWELLING UNITS	DEALERS	MAIL	TOTAL
OHIO (Cont'd)				
HURON COUNTY				
Wakeman		26	2	28
*BALANCE IN COUNTY		21	1	22
TOTAL HURON COUNTY		205	5	210
		(Adjusted Figure		186)
LAKE COUNTY	43,774			
Fairport Harbor (For Net Paid see note (re Painesville,Ohio) end of Par. 25)		208		208
Grand River		57		57
Kirtland		134		134
Madison		110	1	111
Mentor		700	1	701
Mentor-on-Lake		247		247
North Madison		56		56
Painesville (For Net Paid see note end of Par. 25)		1,092	1	1,093
Perry		33	2	35
Wickliffe		1,062		1,062
Willoughby-on-Lake		457		457
Willoughby		2,409	2	2,411
Willowick		744		744
TOTAL LAKE COUNTY		7,309	7	7,316
		(Adjusted Figure		6,878)
LORAIN COUNTY	30,228			
Avon		145		145
Avon Lake		500	1	501
Columbia Station		113	2	115
Elyria		1,100	4	1,104
Grafton		48		48
Lorain		570	1	571
North Ridgeville		182		182
Oberlin		190	2	192
Sheffield		97		97
Wellington		102	1	103
*BALANCE IN COUNTY		31	2	33
TOTAL LORAIN COUNTY		3,078	13	3,091
		(Adjusted Figure		2,906)
LUCAS COUNTY	96,079			
Toledo		32	14	46
		(Adjusted Figure		41)
MAHONING COUNTY	59,065			
Youngstown		75	2	77
		(Adjusted Figure		68)

PLAINTIFF'S EXHIBIT NO. 148 - Filed March 14, 1950

AUDIT BUREAU OF CIRCULATIONS
CHICAGO

AVERAGE NET PAID

2nd Quarter	1948	144,152
3rd "	1948	140,747
4th "	1948	145,013
1st "	1949	144,530

(See Par. 28-a)

AUDIT REPORT—NEWSPAPER

1. Cleveland News
2. Cleveland
3. Ohio
4. Year Estab. 1879
5. Published Evening
6. Report for twelve months ending March 31, 1949
7. General Newspaper.

Case No. [illegible] CIV.
PLAINTIFF'S EXHIBIT
No. 148

8. Daily average net paid circulation by zones and distribution methods:

AVERAGE NET PAID CIRCULATION

	Evening
CITY ZONE	
Dealers and Carriers not filing lists with publisher	17,984
Street Vendor	
Publisher's Counter Sales	
Mail Subscriptions	41
Total City Zone (Population* 1,108,335)	122,572
RETAIL TRADING ZONE	
Dealers and Carriers not filing lists with publisher	
Mail Subscriptions	
Total Retail Trading Zone (Population* 709,854)	18,025
Total City & Retail Trading (Population* 1,818,189)	140,597
ALL OTHER	
Dealers and Carriers	2,635
Mail Subscriptions	375
Total "All Other"	3,010
TOTAL NET PAID excluding Bulk (For bulk sales, see Paragraph 10)	143,607

FILED
MAR 14 1950
At [illegible] O'clock M.
C. W. WATSON, CLERK
U. S. District Court, N. D. O.

9. NET PRESS RUN AND TIME OF EDITIONS:
(THESE FIGURES INCLUDE SPOILED IN DISTRIBUTION, FREE COPIES, UNSOLD AND ALLOWANCES.)
Evening Issue for Tuesday, March 15, 1949:

Edition	Press Time	Date Printed	Issue Dated	Net Press Run	Sales Release See Note	Approx. Distribution City Zone	Retail Zone	All Other
1st	10:20 AM	3/15	3/15	32,860	A-C	72%	19%	9%
2nd	1:21 PM	3/15	3/15	76,675	A-C	83%	17%	0%
3rd	3:57 PM	3/15	3/15	46,850	A-C	98%	1%	1%

For publisher's policy in respect to advertising carried, see Paragraph 28-b.
Note: A Immediate sales release in City.
C Sales release on arrival at destination in Retail Zone and All Other.

10. DAILY AVERAGE BULK SALES IN ALL ZONES: Evening 188.
Consists of an average of 179 copies per issue sold to local newspapers for departmental use and an average of 11 copies per issue sold to a railroad company at 4½¢ per copy, distribution being made by the purchasers.
*1940 Census.

1165 u

STATE COUNTY TOWN	OCCUPIED DWELLING UNITS	DEALERS	MAIL	TOTAL
OHIO (Cont'd)				
LAKE COUNTY				
Madison		114	1	115
Mentor		451		451
Mentor-on-the-Lake		128		128
North Madison		173		173
North Perry		41		41
Painesville (For Net Paid see note end of Par. 25)		1,100	2	1,102
Waite Hill		39		39
Wickliffe		301		301
Willobee-on-the-Lake		136		136
Willoughby		1,321	3	1,324
Willowick		134		134
*BALANCE IN COUNTY		22		22
TOTAL LAKE COUNTY		4,316	6	4,322
		(Adjusted Figure		4,016)
LORAIN COUNTY	30,228			
Amherst		30	3	33
Avon		81		81
Avon Lake		144	1	145
Columbia Station		158		158
Elyria		708		708
Fields		35		35
Grafton		30	4	34
Lorain		735		735
North Ridgeville		120		120
Oberlin		255	1	256
Sheffield Lake		82		82
Wellington		105		105
*BALANCE IN COUNTY		20		20
TOTAL LORAIN COUNTY		2,503	9	2,512
		(Adjusted Figure		2,335)
LUCAS COUNTY	96,079			
Toledo		30	4	34
		(Adjusted Figure		29)
MAHONING COUNTY	59,065			
Youngstown		85		85
*BALANCE IN COUNTY		4		4
TOTAL MAHONING COUNTY		89		89
		(Adjusted Figure		76)
MARION COUNTY	12,761			
Marion		30	1	31
		(Adjusted Figure		26)

PLAINTIFF'S EXHIBIT NO. 149 - Filed March 14, 1950

AUDIT BUREAU OF CIRCULATIONS
CHICAGO

AVERAGE NET PAID

		Morning	Sunday
2nd Quarter	1948	268,165	453,373
3rd "	1948	275,385	456,011
4th "	1948	274,532	464,460
1st "	1949	273,209	471,312

(See Par. 28-a)

AUDIT REPORT—NEWSPAPER

26525

PLAINTIFF'S EXHIBIT No. 149-

1. Cleveland Plain Dealer
2. Cleveland
3. Ohio
4. Year Estab. As a Weekly 1842; Evening 1845; Morning 1885; Sunday 1885
5. Published Morning. Sunday.
6. Report for twelve months ending March 31, 1949.
7. General Newspaper.

8. Daily average net paid circulation by zones and distribution methods:

AVERAGE NET PAID CIRCULATION

	Morning	Sunday
CITY ZONE		
Dealers and Carriers not filing lists with publisher		
Street Vendor		
Publisher's Counter Sales		
Mail Subscriptions		
Total City Zone (Population* 1,108,335)	161,315	261,561
RETAIL TRADING ZONE		
Dealers and Carriers not filing lists with publisher	51,756	98,070
Mail Subscriptions	5,141	24
Total Retail Trading Zone (Population* 709,854)	56,897	98,094
Total City & Retail Trading (Population* 1,818,189)	218,212	359,655
ALL OTHER		
Dealers and Carriers	44,100	100,426
Mail Subscriptions	10,501	1,186
Total "All Other"	54,601	101,612
Members of Armed Forces (See Par. 28-b)	22	22
TOTAL NET PAID excluding Bulk (For bulk sales, see Paragraph 10)	272,835	461,289

FILED
MAR 14 1950
At ... o'clock ... M.
C. B. WATKINS, CLERK
U. S. District Court, N. D. O.

*1940 Census

1165 w

STATE COUNTY TOWN	OCCUPIED DWELLING UNITS	DEALERS	MORNING MAIL	TOTAL	DEALERS	SUNDAY MAIL	TOTAL
OHIO (Cont'd)							
LAKE COUNTY							
Mentor		457	45	502	811	1	812
Mentor Headlands		59		59	225		225
Mentor on the Lake		170		170	424		424
Painesville (For Net Paid see note end of Par. 25)		1,976	81	2,057	4,185		4,185
Perry		38	93	131	161		161
Timberlake		42		42	91		91
Township Park		205		205	198		198
Waite Hill Village		75		75	85		85
Wickliffe		424	6	430	955		955
Willobee		126		126	282		282
Willoughby		673	18	691	1,292		1,292
Willoughby Township		539	18	557	1,861		1,861
Willoway Beach		55		55	180		180
Willowick		374		374	942		942
*BALANCE IN COUNTY			3	3			
TOTAL LAKE COUNTY		6,511	409	6,920	14,604	1	14,605
	(Adjusted Figure			6,677			13,758)
LICKING COUNTY	18,346						
Newark		70	5	75	500		500
Utica		18	2	20	46		46
*BALANCE IN COUNTY			25	25		6	6
TOTAL LICKING COUNTY		88	32	120	546	6	552
	(Adjusted Figure			119			516)
LOGAN COUNTY	8,767						
Belle Center			25	25			
Bellefontaine		232	27	259	555		555
DeGraff		29	12	41			
Rushsylvania		7	7	14	41		41
Russell's Point		3	2	5	25		25
*BALANCE IN COUNTY		6	23	29	31	1	32
TOTAL LOGAN COUNTY		277	96	373	652	1	653
	(Adjusted Figure			372			610)
LORAIN COUNTY	30,228						
Amherst		287	85	372	1,323		1,323
Avon		115	26	141	421		421
Avon Lake		474	11	485	1,030		1,030
Brighton					50		50
Columbia Station			118	118	138		138
Elyria		3,389	105	3,494	7,074		7,074
Fields		42		42	151		151
Grafton		97	82	179	322		322
Huntingdon					68		68
Kingsley Corners					50		50
Kipton			13	13	100		100
LaGrange		50	35	85	174		174

STATE COUNTY TOWN	OCCUPIED DWELLING UNITS	MORNING DEALERS	MORNING MAIL	MORNING TOTAL	SUNDAY DEALERS	SUNDAY MAIL	SUNDAY TOTAL
HIO (Cont'd)							
LORAIN COUNTY							
LaPorte		16		16	95		95
Lorain		4,727	15	4,742	11,125		11,125
North Eaton					152		152
Oberlin		760	102	862	1,210	1	1,211
Penfield		5		5	65		65
Pittsfield					46		46
Ridgeville		110		110	367		367
Rochester		6	6	12	63		63
Sheffield		160		160	390		390
Wellington		320	163	483	585	1	586
*BALANCE IN COUNTY		12	7	19	45		45
TOTAL LORAIN COUNTY		10,570	768	11,338	25,044	2	25,046
	(Adjusted Figure			10,940			23,593)
LUCAS COUNTY	96,079						
Toledo		110	52	162	265	6	271
*BALANCE IN COUNTY			4	4			
TOTAL LUCAS COUNTY		110	56	166	265	6	271
	(Adjusted Figure			165			253)
MADISON COUNTY	5,451						
London		7	3	10	30		30
	(Adjusted Figure			10			28)
MAHONING COUNTY	59,065						
Beloit			18	18	49		49
Campbell		37	5	42	15		15
Canfield		13	12	25	15		15
Damascus		18	3	21	78		78
Sebring		140	5	145	257		257
Struthers		55	5	60	43		43
Youngstown		2,150	26	2,176	1,300	2	1,302
*BALANCE IN COUNTY		15	14	29	44		44
TOTAL MAHONING COUNTY		2,428	88	2,516	1,801	2	1,803
	(Adjusted Figure			2,507			1,685)
MARION COUNTY	12,761						
Caledonia		24	6	30	100		100
LaRue		38	22	60	109		109
Marion		725	40	765	2,010	1	2,011
Martel			3	3	30		30
New Bloomington			4	4	30		30
Prospect			5	5	52		52
*BALANCE IN COUNTY			7	7	53		53
TOTAL MARION COUNTY		787	87	874	2,384	1	2,385
	(Adjusted Figure			871			2,228)

(Cleveland Plain Dealer, Cleveland, Ohio, Page #15)

1165 y

[fol. 1165z] PLAINTIFF'S EXHIBIT No. 169

Filed March 14, 1950

The Lorain Journal
and Lorain Times Herald
Every Evening Except Sunday
(Established 1879)
Lorain, Ohio

August 5, 1949.

McCann-Erickson, Inc.
1300 Guardian Building
Cleveland 14, Ohio

Gentlemen:

Effective immediately we will not accept for publication any advertising for The Standard Oil Company.

Very truly yours, The Lorain Journal, D. P. Self,
Business Manager. DPS:jls.

[fol. 1165aa] PLAINTIFF' EXHIBIT No. 254

Filed Mar. 14, 1950

The Lorain Journal Company

Calendar Year 1949

Income from the following advertising classifications:

Display — Local	$440,190.20	
Classified — Display & Liners	141,342.99	
Gross Income Display and Classified	581,533.19	
Discount	10,625.00	
Net Income Display and Classified		$570,908.19

Legal		7,876.16
National	$ 67,768.74	
Discount and Allowances	1,339.76	
	$ 66,428.98	
Commissions (National Representative)	6,636.91	
Net Income National		59,792.07
Total Net Income — All Advertising		$638,576.42
Income from Circulation		$251,179.26

[fol. 1165bb] PLAINTIFF' EXHIBIT No. 255
Filed Mar. 14, 1950

The Lorain Journal Company

Calendar Year 1949

Amount Paid by The Lorain Journal Company for Newsprint:

	Tons	Amount
Abitibi Sales Co., Ltd.	1,134.3305	$114,567.43
Western Newspaper Union	62.3905	6,925.35
Total purchased for year	1,196.721	$121,492.78

Newsprint Consumed:

Tons 1,069.607

Cost $108,598.51

[fol. 1165cc] PLAINTIFF'S EXHIBIT No. 258

Robert H. Rice
Attorney at Law
Elyria Savings Building
Elyria, Ohio

August 23, 1948.

Mr. S. A. Horvitz,
The Highway Construction Co.,
Midland Bank Building,
Cleveland, Ohio.

Dear Sam:—

Through the years we've known each other well enough to speak our minds frankly, hence I hope you'll not resent this letter, but accept same as a friendly inquiry.

The boys at the Chronicle-Telegram have consulted me several times in the last few weeks, after conferences with your Lorain Journal representatives, as to radio policy. They tell me the most persuasive argument advanced by your Mr. Self, for newspaper opposition to local radio, is that such Elyria-Lorain radio advertising will tend to break down the established line of demarkation between the two, Elyria and Lorain, separate trading areas, long fostered by our papers.

Such break down might work real hardship to local merchants in each City. That argument struck me as being sound and as having real sales appeal.

Hence, while I have been frank to say I believe the proposed radio policy is both unsound economically and shortsighted as a matter of public relations, I could not advise them to refuse to go along with the Journal in a policy of cooperation.

Then last week I noticed that one issue of the Journal, with its impressive Back-to-School Lorain merchants Supplement, was distributed house to house throughout Elyria.

The boys at the Chronicle-Telegram have not consulted me since that incident. I don't know their reaction. But, personally, I've been asking myself:—

How does that distribution by the Journal of that bid by Lorain merchants for Elyria business square with the supposed and proposed policy of seeking to maintain the two separate trading areas?

[fol. 1165dd] Why was not that doing exactly what your Mr. Self so eloquently argued Station W.E.O.L. would do?

Has not the Journal thereby taken from the Chronicle-Telegram its strongest argument, with Elyria advertisers, for discouraging radio advertising and refusing to "play ball" with Station W.E.O.L.?

Has the Journal so soon abandoned the policy your representatives suggested the Chronicle-Telegram maintain and fight for?

I anticipate being asked those questions either by the boys at the Chronicle or by local merchants I represent. To be able to answer them fairly, intelligently and with authority I'd sure appreciate your views.

Sincerely yours, R. H. Rice. RHR/js.

[fol. 1165ee] PLAINTIFF'S EXHIBIT No. 259

Filed March 14, 1950

August 13, 1949.

Lang, Fisher & Strashower, Inc.
1010 Euclid Avenue
Cleveland, Ohio

Gentlemen:

We are herewith returning order and copy for the Cleveland Browns advertisement.

Very truly yours, The Lorain Journal, D. P. Self, Business Manager. DPS:jls.

DOCKET ENTRIES

CIVIL DOCKET

✓ Docket entries

TITLE OF CASE	ATTORNEYS
	For Plaintiff:
United States of America	Don C. Miller
	Victor H. Kramer
VS	Robert B. Hummel
1. The Lorain Journal Company	Public Square Bldg.
2. Samuel A. Horvitz	*For Defendant:*
3. Isadore Horvitz (1 to 5)	Parker Fulton; Charles A. Baker
4. D. P. Self	1250 Terminal Tower
5. Frank Malloy (Amicus Curiae)	Elisha Hanson
BASIS OF ACTION: Injunction	729 Fifteenth St., N.W.
	Washington 5, D. C.
	King E. Fauver
	1002 Lorain County Bank Bldg.
JURY TRIAL CLAIMED:	Elyria, Ohio
ON	

DATE	PLAINTIFF'S ACCOUNT	RECEIVED	DISBURSED	DATE	DEFENDANT'S ACCOUNT	RECEIVED	DISBURSED
				1-9-51	Burgess F & F	5 00	

ABSTRACT OF COSTS

TO WHOM DUE	AMOUNT

RECEIPTS, REMARKS, ETC.

J.S.5 mailed Sep 30, 1949

1166

D. C. 106

26823 U.S.A. vs The Brain Journal Co., et al.

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES				AMOUNT REPORTED IN EMOLUMENT RETURNS	
		PLAINTIFF		DEFENDANT			
9/22/49	Complaint filed.	15	00				
9/22/49	Motion for Preliminary Injunction filed.						
9/22/49	Memorandum of points and authorities in support of plaintiff's motion for preliminary injunction filed.						
9/22/49	Order that plaintiff's application for injunction be set down for hearing Nov. 15, 1949 at 10:00 A.M.; defendants may affidavits on or before Oct. 21, 1949 and plaintiff affidavits in reply thereto on or before Oct. 28, 1949 filed & ent., Freed, J. Noted 9/22/49. 6 true copies of order to Marshal for service.						
9/22/49	Summons issued. 5 copies of summons to Marshal.						
9/26/49	Summons retn. & filed. Served defendants 9/23/49. Fees $13.48.						
9/26/49	Order retn. & filed. Served defendants 9/23/49. Fees $10.00.						
10/11/49	Answer of defendants filed. Copies mailed 10/11/49.						
10/20/49	Counter-affidavits of defendants re motion for temporary injunction filed. Copy mailed 10/20/49.						
10/28/49	Reply affidavits and memorandum of plaintiff in support of motion for preliminary injunction filed. Copy mailed 10/28/49.						
11/7/49	Memo. of defs. in opposition to motion for prel. inj. filed.						
11/7/49	Motion of American Newspaper Publishers Assoc. to file brief as amicus curiae filed. Copies mailed 11/3/49.						
11/10/49	Order granting motion of American Newspaper Publishers Assoc. to file brief amicus curiae ent., Freed, J. Noted 11/10/49. Copies of ruling to counsel.						
11/10/49	Brief of American Newspaper Publishers Assoc. Amicus Curiae filed. Copies mailed.						
11/15/49	Hearing on motion for preliminary injunction begun and concluded; motion taken under advisement ent., Freed, J. Reporter Gabriel. Notices to counsel.						
11/18/49	Memo. of Defendants filed. Copies mailed 11/18/49.						
11/22/49	Transcript of arguments on motion for preliminary injunction filed.						
12/7/49	Memo. of opinion of Court denying motion for preliminary injunction filed. Freed, J. Copies delivered to counsel.						
12/12/49	Order denying plaintiff's motion for preliminary injunction filed & ent. Freed, J. Noted 12/12/49. Copies mailed.						1167

United States of America vs The Lorain Journal Co. et al 26823

CIVIL DOCKET

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
12/14/49	Motion of plaintiff for production of documents filed.			
	Copy served 12/14/49.			
12/14/49	Affidavit in support of motion filed. Copy served 12/14/49			
	(endorsed on motion)			
12/19/49	Motion of defendants THE LORAIN JOURNAL, SAMUEL A. HORVITZ,			
	ISADORE HORVITZ to limit scope of examination etc. and			
	affidavit filed. Copies mailed 12/19/49.			
12/29/49	Stipulation and order re production and inspection of			
	records filed. Freed, J. Noted 12/29/49. Notice waived.			
1/3/50	Motion of plaintiff to Amend Complaint filed.			
1/4/50	Order granting plaintiff leave to amend paragraphs 17,			
	18, and 19 of its complaint in the manner shown in the			
	motion to amend and granting defendants 20 days after			
	thereof to answer amended complaint filed. Freed, J.			
	Noted 1/4/50. (Amended substituted pages attached to			
	complaint) Motion together with Order granting leave to			
	amend complaint served 1/5/50.			
1/12/50	Motion of defendant's for leave to file amended answer			
	filed. Copy served.			
1/13/50	Order granting defendant's motion for leave to file amended			
	answer filed. Freed, J. Noted 1/13/50. Notice waived.			
1/13/50	Amended joint and several answer of defendant's to pltf's.			
	complaint as amended filed. Copy served.			
1/16/50	Interrogatories of defendants and motion for order to			
	produce filed. Copy mailed 1/16/50.			
1/20/50	Stipulation & order granting plaintiff leave to file ans.			
	to deft's. interrogatories on or before 2/6/50 & that this			
	stipulation is without prejudice to the right of the pltf.			
	to file objection to any of the interrogatories or to			
	deft's. motion for order to produce filed. Freed, J. Noted			
	1/20/50. Notice waived.			
1/20/50	Plaintiff's objections to certain interrogatories and			
	motion for order to produce filed. Copy acknowledged			
	1/20/50.			
1/27/50	Memorandum of defendants in opposition to objections of			
	plaintiff to certain interrogatories and motion to produce			
	filed. Copy mailed 1/27/50.			1168
	(over)			

D. C. 110

26823 United State vs. The Lorain Journal Cc nt al

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
1/30/50	Motion of plaintiff for issuance of subpoenas filed.			
1/30/50	Order allowing issuance of subpoenas filed. Freed J. Noted 1/30/50. Copy of motion and order mailed to Parker Fulton			
2/3/50	Plaintiff's memorandum in support of objections to certain interrogatories filed. Copy acknowledged 2/3/50.			
2/3/50	Answers to some of interrogatories and motion to produce filed. Copy acknowledged 2/3/50.			
2/10/50	Motion of plaintiff for issuance of additional subpoenas filed.			
2/10/50	Order allowing issuance of additional subpoenas filed. Freed, J. Noted 2/10/50. Copy of motion and order mailed to Parker Fulton.			
2/15/50	Two civil subpoenae retn. & filed. Served Robert Tebbel 2/13/50 & served C. Hank Norton 2/14/50. Fees $1.72.			
2/15/50	Two subpoenae to produce document retn. & filed. Served Isadore Horvitz 2/10/50 & served Robert Klein 2/14/50. Fees $1.36.			
2/15/50	Memorandum opinion filed. Freed, J. (Defendant's Motion for production overuled; plaintiff's objections to interrogatories sustained) Copies mailed to counsel.			
2/16/50	Thirty-nine subpoenae retn. & filed. Served Fred C. Williams, Lee Geiger, August Ilg, Roy Eisman, W. C. McConnell, Simon Gary, Leo Murray, Henry Kohlmyer, George G. Llewellyn, Mrs. Ruth Stevens, Sol Dinn, Leo Palencki, Donald A. Heis ner, Cornelius A. Hageman, S. C. Miller, R. F. Shepherd, Harry Kreiger, H. D. Murphy, Eugene Givner, H. E. Holbrook, Nat Rosenbaum, Joseph W. Brochu, Mrs. Bert Janna, Barney Nelson, Lee Richards, Bert Janne, Jowaleski, Harold Pyle, Dan D'Andrea, Michael Rusine, Joseph J. Lepon, Morris Mayer, Leonard Oldfield, Mrs. Paul Hentges, V. L. Cayner, Paul Hentges, Bert Koeblitz, Ray N. Jackson & Dominic Richi 2/14/50. Fees $29.30			
2/16/50	Subpoena retn. & filed. Served Pa ul E. Driscol 2/15/50. Fees 50¢			
2/16/50	Two subpoenae retn. & filed. Served James Sova & Anthony T. Retay, Jr. 2/14/50. Fees $1.00.			1169
2/17/50	Two subpoenae retn. & filed. Served Morton Frank & Leonard			

CIVIL DOCKET USA vs Th Lorain Journal Co. et al 26823

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
	Keller 2/15/50. Fees $7.10.			
2/21/50	Motion of pltf. for issuance of subpoena filed.			
2/21/50	Order allowing subpoena to be issued to Jules Cohen filed, Freed, J. Noted 2/21/50.			
2/21/50	Civil Subpoena retn. & filed. Served Fred Fay 2/21/50 Fees 62¢.			
2/21/50	Order overruling defendants' motion for production and sustaining plaintiff's objections to interrogatories filed, Freed, J. Noted 2/21/50. Copies to counsel.			
2/23/50	Nine subpoenas retn. & filed. Served Roy Ammel, Robert H. Rice, James Reser, Margaret Ware, Mrs. Louis Herbst, Joseph X. Goeric, Louis Herbst, Richard Fier & Russell Stokely 2/20/50. Fees $16.57.			
2/23/50	Two plaintiff's subpoenas retn. & filed. Served C. C. Merumore & O. B. Schoepfle 2/20/50. Fees $4.12.			
2/27/50	Two civil subpoenas retn. & filed. Served A. C. Rudnutt & Edward A . Brosky 2/27/50. Fees $4.12.			
2/27/50	Subpoena to produce document or object retn. & filed. Served Paul L. Stockert 2/27/50. Fees $0.50.			
2/27/50	Motion for issuance of subpoena filed.			
2/27/50	Order allowing issuance of subpoena to Geo. H. Eggert filed, Freed, J. Noted 2/27/50.			
3/1/50	Trial begun but not concluded; adjourned to 10:00 A.M. tomorrow filed. Freed J. Reporters Gabriel, Ja rvella.			
3/2/50	Trial to the Court resumed but not concluded; adjourned until 10:00 A.M. tomorrow morning filed. Freed, J. Reporters Jarvela & Gabriel.			
3/3/50	Trial to the Court resumed but not concluded; adjourned until 10:00 A.M. Tuesday morning filed. Freed, J. Reporters Jarvela & Gabriel.			
3/6/50	Three civil subpoena retn. & filed. Served William Givner, William Gerhardt & Mrs. Anna L. Siennicki 3/1/50. Fees $5.42.			
3/7/50	Subpoena retn. & filed. Served Richard Dugan 3/6/50. Fees 62¢.			
3/7/50	Trial to the Court resumed but not concluded; adjourned until 10:00 tommorrow morning filed. Freed, J., Jarvela, reporter.			1170
3/8/50	Subpoena retn. & filed. Served Gus Atthanasoff 3/7/50 .			

D. C. 110

26823 U. S. A. vs The Chicago Journal Co., et al

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS	
		PLAINTIFF	DEFENDANT		
	Fees $3.86.				
3/8/50	Trial resumed but not concluded, adjourned until 10:00 A.M. tomorrow filed, Freed, J, Reporter Jarvela.				
3/9/50	Subpoena retn. & filed. Served Mr. Charles John Thornquest 3/3/50. Fees 62¢.				
3/9/50	Subpoena retn. & filed. Served Stanley P. Barnett 3/8/50. Fees $1.46.				
3/9/50	Trial resumed but not concluded; adjourned until 10:00 A.M. Monday filed, Freed, J. Reporters Gabriel & Jarvela.				
3/13/50	Trial resumed but not concluded; adjourned until 10:00 A.M. tomorrow filed, Freed, J., Reporter Jarvela.				
3/14/50	Two subpoena retn. & filed. Served Robert A. Harley & Joseph Kelly 2/15/50 Fees $4.48.				
3/14/50	Trial resumed and concluded; cause taken under advisement; plaintiff to file brief and proposed Findings of Fact by Apr. 13, 1950; defendants to file brief and proposed Findings of Fact by April 28, 1950 filed, Freed, J. Reporters Jarvela & Gabriel.				
3/14/50	Plaintiff's exhibits 1, 2, 3, 5, 6, 7, 9 to 117, inc., 119, 121 to 132, inc., 135 to 140, inc., 147 to 255, inc., 258 and 259 filed. Exhibits filed in Rm. 327 Shelf 43.				
3/14/50	Defendants' exhibits A,B,C,D,E and G to K-8, inc., filed. Exhibits filed in Rm. 327 Shelf 43.				
3/16/50	Order impounding plaintiff Exhibits 141, 142,143, 144,145, 146, 256 and 257 to be opened only by order of the Court or appropriate reviewing Court on appeal filed. Freed J. Noted 3/16/50. Notice waived.				
4/13/50	Brief of U.S.A. filed. Copy served 4/13/50.				
4/13/50	Plaintiff's proposed findings of fact lodged. Copy acknowleged 4/13/50.				
4/13/50	Plaintiff's conclusions of Law lodged, Copy acknowledged 4/13/50.				
4/28/50	Defendants' proposed findings of fact lodged. Copy acknowledged 4/28/50.				
4/28/50	Defendants' proposed conclusions of law lodged. Copy acknowledged 4/28/50.				
5/1/50	Order permitting defendants to file printer's proff sheets of its brief and may substitute finish copy by filing same not later than 5/3/50 filed. Freed J. Noted 5/1/50. Copies mailed to counsel.				
5/1/50	Printer's proff sheets of defendant's brief filed.				
5/1/50	Brief of defendant filed. Copy acknowledged 5/1/50.				1171

(continued on next page)

United States vs. The Lorain Journal Co. et al 26823

CIVIL DOCKET

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
5/9/50	Application and order extending time of U. S. to file reply brief by 5/10/50 filed. Freed J. Noted 5/9/50.			
5/10/50	Reply brief of U.S.A. filed. Copy served 5/10/50.			
8/29/50	Memorandum opinion filed. Freed, J. Noted 8/29/50. (The U.S. is entitled to relief) Copies to counsel.			
8/29/50	Transcript of proceedings on trail before Judge Freed filed. Two Volumes.			
9/5/50	Stipulation & order granting plaintiff leave to file findings of fact and conclusions of law and proposed form of decree by 9/28/50 filed. Freed J. Noted 9/5/50. Notice waived.			
9/28/50	Draft of Findings of Fact submitted by plaintiff lodged.			
9/28/50	Draft of Conclusions of Law submitted by plaintiff lodged.			
9/28/50	Draft of Final Judgment submitted by plaintiff lodged.			
9/28/50	Proof of service of copies of proposed findings etc. filed. Mailed 9/28/50.			
9/29/50	Motion and order extending time for defendants tc file objections, etc. to plaintiff's proposed findings and decree to and including Oct. 27, 1950 filed, Freed, J. Noted 9/29/50.			
10/27/50	Objections of defendants to plaintiff's proposed findings of fact filed.			
10/27/50	Objections of defendants to plaintiff's proposed final judgment filed.			
10/27/50	Statement of defendants as to plaintiff's proposed conclusions of law filed.			
10/27/50	Final Judgment proposed by defendants lodged.			
10/27/50	Acknowledgment of service of above papers on plaintiff filed.			
10/31/50	Memorandum of plaintiff in support of proposed final judgment and in answer to defendants' objections thereto filed. Copy served 10/31/50.			
1/5/51	Findings of Fact and Conclusions of Law filed. Freed J. Copies delivered to counsel for U. S. and Parker Fulton mailed to Ellis ba Hanson 1/5/51.			
1/5/51	Final Judgment finding that defendants have violated Sherman Act; defendant Lorain Journal Co. enjoined from discrimination in regard to advertisements accepted for publication; 15 days after entry of within judgment and			1172

D. C. 110

26823 U.S.A. vs Lorain Journal Co., et al

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
	once a week for 25 weeks thereafter corporate defendant shall insert in its newspaper notice of within judgment; corporate defendant and individual defendants directed to maintain for five years from date books and records which include all memoranda relating to the subject matter of this judgment and directed to advise within ten days of judgment all officers, agents, etc. of defendant subject to judgment; any authorized representative of Dept. of Justice to be given access during office hours of corporate defendant to all records relating to matters contained in judgment and to interview officers or employees of defendants; costs vs defendants filed, Freed, J. Noted 1/5/51. Copies delivered 1/5/51. Copy mailed to Elisha Hanson 1/5/51.			
1/8/51	Motion of defendants for new trial and exceptions to Findings of Fact and Conclusions of Law and memo filed. Copy acknowledged 1/8/51, by counsel for U.S.			
1/8/51	Endorsed ruling overruling motion for new trial etc. Freed J. Noted 1/8/51. Copies of endorsed ruling to counsel.			
1/8/51	Petition of defendant for appeal to the Supreme Court of the United States filed. Copy acknowledged 1/5/51 by counsel for U.S.		5 00	
1/8/51	Assignment of errors filed. Copy acknowledged 1/8/51 by counsel for U.S.			
1/8/51	Order allowing appeal and fixing appeal bond in the sum of $250.00 and directing issuance of citation filed. Freed J. Noted 1/8/51. Copy acknowleged 1/8/51 by counsel for U.S.			
1/8/51	Citation issued, and filed. Copy acknowledged 1/8/51.			
1/8/51	Precipe, designation of papers for appeal filed. Copy acknowledged 1/5/51 by counsel for U.S.			
1/8/51	Bond on appeal filed. (U.S.F.& G. Co)			
1/8/51	Motion of defendants to have original records in District Court transmitted to the Clerk of the Supreme Court of the United States, as part of the record on appeal filed. Copy acknowledged 1/5/51 by counsel for U.S.			
1/8/51	Endorsed ruling granting motion to have original papers transmitted to the Clerk of the Supreme Court etc, Freed J. Copies of endorsed ruling to counsel.			
1/8/51	Application of defendants for stay of final judgment filed. Copy acknowledged 1/5/51 by counsel for U.S.			1173

(over)

U.S.A. vs. Lorain Journal Co. et al 26823

CIVIL DOCKET

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
1/8/51	Order that documents and papers received in evidence in the District Court and the stenographer's transcript of the proceedings held before this Court may be forwarded, in lieu of copies of such documents and papers, to the Clerk of the Supreme Court of the United States as part of the transcript of record on appeal filed. Freed J. Noted 1/8/51. Copy acknowledged 1/8/51, by counsel for U.S.			
1/8/51	Proof of service of copies of petition for appeal, order allowing appeal, assignment of errors, Statement of jurisdiction and citation and statement directing attention to provisions of Paragraph e of Rule 12 of the Rules of the Supreme Court filed. Copies acknowledged 1/8/51.			
1/8/51	Statement required by paragraph 2 Rule 12 of the Rules of the Supreme Court of the United States filed. Copy acknowledged 1/8/51.			
1/8/51	Statement as to jurisdiction filed. Copy acknowledged 1/8/51.			
1/9/51	Order overruling defendants' motion for new trial filed. Freed, J. Noted 1/9/51. Copies mailed to counsel.			
1/9/51	Order denying stay of execution of Judgment, except that Section IV and Section V (B) of said final judgment are stayed pending final disposition of appeal, filed. Freed J. Noted 1/9/51. Copy mailed to counsel for defendant. Notice waived by counsel for plaintiff.			
1/16/51	Amended designation of record filed.			
1/23/51	Transcript of Proceedings filed. (Vol. 1)			
1/23/51	Transcript of Proceedings filed. (Vol. 2)			
1/29/51	Application of defendants for construction of final judgment with exhibit filed. Copy mailed 1/29/51.			
2/8/51	Order extending time for filing record on appeal in U.S. Supreme Court to and including Apr. 18, 1951 filed, Freed, J. Noted 2/8/51. Copies mailed to counsel 2/8/51.			
3/5/51	Affidavit of costs filed. $1469.35. Copy mailed 3/5/51.			
3/13/51	Endorsed ruling denying application of defendants for construction of final judgment, Freed, J. Copies of ruling to counsel.			
3/14/51	Order denying defendants' application for construction of the final judgment filed. Freed, J. Noted 3/14/51. Copies to counsel.			1174
4/2/51	Transcript of record mailed to U.S. Supreme Court.			

D. C. 110

DATE	FILINGS, PROCEEDINGS	CLERK'S FEES				AMOUNT REPORTED IN EMOLUMENT RETURNS	
		PLAINTIFF		DEFENDANT			
4/2/51	(See miscellaneous earnings of 3/31/51)						

[fol. 1175] [File endorsement omitted]

In United States District Court

[Title omitted]

Filed. C. B. Watkins, Clerk, U. S. District Court, NDO, August 29, 1950, 12:10 P.M.

Memorandum—Filed August 29, 1950

Freed, J.:

This is a civil action instituted by a complaint filed by the United States under Section 4 of the Sherman Anti-Trust Act, 15 U.S.C.A. §§ 1-7 against the defendants, The Lorain Journal Company, an Ohio corporation which publishes the Journal and Times-Herald (hereinafter the "Journal"), Samuel A. Horvitz, Vice President, Secretary, and a director of the corporation, Isadore Horvitz, President, Treasurer and a director of the corporation, D. P. Self, Business Manager of the Journal, and Frank Maloy, Editor of the Journal. It seeks to enjoin them from continuing to engage in certain acts in furtherance of an alleged combination and conspiracy in restraint of the interstate commerce of competitive news and advertising media and of their advertisers in violation of Section 1 of the Act, and an alleged combination and conspiracy to monopolize and an [fol. 1176] attempt to monopolize news and advertising channels in violation of Section 2 of the Act.

There is no dispute as to those salient facts which are dispositive of the issues raised. Since 1933, the Lorain Journal has been the only daily (excluding Sunday) newspaper of general circulation published in Lorain, Ohio, a city with a population of approximately 52,000. Prior to that time a competing daily newspaper called the Times-Herald was published and circulated in Lorain, but in December, 1932 its assets were purchased by the Lorain Journal Company, the Mansfield Journal Company and defendant Samuel A. Horvitz.

The Journal's position in the community is a commanding and an overpowering one. It has a daily circulation in Lorain of over 13,000 copies and it reaches ninety-nine per cent of the families in the city. The Lorain Sunday News is a small weekly published in Lorain on Sundays

only. It has a circulation of slightly over 3,000 copies, distributed almost exclusively in Lorain. The Chronicle-Telegram, a daily (excluding Sunday) newspaper of general circulation, is published eight miles away in Elyria, Ohio, but that newspaper is not distributed in Lorain although the Journal is sold in Elyria. The one morning and two afternoon newspapers published in nearby Cleveland have some circulation in Lorain, but the Journal enjoys more than two-thirds of the combined Lorain circulation of the four newspapers.

The evidence makes it clear that the Journal has no competitor for the newspaper advertisements of Lorain merchants except for the extremely limited competition provided by the Lorain Sunday News.

[fol. 1177] The first serious competitive cloud appeared on the Journal's previously unlimited horizon in October, 1948, when, pursuant to Federal Communications Commission's license, radio stations WEOL and WEOL-FM began broadcasting operations from studios in Lorain and Elyria. The Journal had previously attempted without success to obtain a radio broadcasting license.

The principal charge of the complaint and the proof was that the defendants formulated and put into execution a plan designed and intended to eliminate this threat by the device of refusing to publish advertisements for local merchants who used the radio stations.[1]

This charge has been clearly established. The record reveals a story of bold, relentless, and predatory commercial behavior. The Journal, its officers and employees, informed merchants who proposed to advertise over the radio stations that if they did so, their terminable advertising contracts with the Journal would be brought to an end and would not be renewed. The Journal monitored the programs of WEOL to learn who as using the advertising facilities of the radio station and those who did

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[1] In addition to this central theme of the complaint and the proof, the Government charged the defendants with practices directed against the Lorain Sunday News and the Elyria Chronicle-Telegram. Some proof was adduced in support of these charges but that proof is too inconclusive to justify the findings sought by the Government. Those charges are therefore disregarded in the main body of this memorandum.

advertise over the radio had their contracts terminated, and were permitted to renew them only after they ceased to use WEOL. Numerous Lorain County merchants testified that, as a result of the Journal's policy, they either ceased or abandoned their plans to advertise over WEOL.

[fol. 1178] The Journal refused to carry the program logs of WEOL as paid advertisements although it prints the logs of some Cleveland stations in its news columns, and it even refused to publish an advertisement seeking employees to staff the radio station.

No excuse was offered to the prospective advertiser in many instances for the peremptory refusal to accept the advertising if he used the radio station. On some occasions, when merchants remonstrated or sought an explanation, they were informed that it was the policy of the Journal to require advertisers to give the radio a "fair"—that is, an exclusive—trial or they were informed that the policy was designed to "protect" the Lorain merchants by preserving the integrity of the Lorain market.

Those same rationalizations were advanced to this Court as the justifications for the behavior of the defendants, and this Court, like the Lorain merchants to whom they were first presented, is not convinced. The assertion that the Journal's policy was designed to permit advertisers to give the radio a fair test is too specious for any comment other than that it is unworthy of belief and unworthy of the astuteness and sharp business intelligence noticeably displayed on the witness stand by the defendant Samuel Horvitz, the dominant figure in the operation of the Journal. That the Journal was attempting to create an economic oasis in Lorain seems incredible, and it is difficult for the Court to see how the defendants could reasonably ascribe this activity to a benevolent desire to protect the Lorain merchants from themselves where the obvious result was to deprive those merchants of a channel which might attract additional business to their market at the very time that [fol. 1179] merchants in neighboring communities served by WEOL were using it for that purpose.

From the evidence there can be no doubt that the policy was as uncomplicated in purpose and as lacking in subtlety as the profit motive itself: the Journal sought to eliminate this threat to its pre-eminent position by destroying WEOL.

WEOL was licensed for the purpose of serving an area

located wholly within the boundaries of Ohio. However, its broadcasts can be and are heard in southeastern Michigan. Numerous persons testified that they heard the broadcasts from WEOL on home or automobile receiving sets in Michigan, and it was agreed that additional witnesses would give similar testimony if called. A radio engineer who conducted field tests gave his opinion that WEOL might be satisfactorily heard on receiving sets in various places in southeastern Michigan during daylight hours.

WEOL is not affiliated with any national network. The majority of its programs originate in its local studios. However, in the past year, it carried broadcasts of over one hundred athletic events originating at places outside of Ohio. About sixty-five per cent of WEOL's broadcast time is devoted to the playing of musical transcriptions which are leased to WEOL by companies located outside of Ohio. WEOL devotes about ten to twelve per cent of its total broadcast time to news broadcasts. These broadcasts consist in part of world and national news gathered outside of Ohio and provided to WEOL by United Press teletype.

The income of WEOL is predominantly derived from the advertising of local merchants. Sixteen per cent of its gross income in 1949 was obtained from "National [fol. 1180] advertisers" who seek to promote good will for a particular product on a national scale. In a relatively few instances WEOL has broadcast advertising for out-of-state suppliers who were soliciting orders to be filled by direct shipment. There was no evidence that either of these two classes of advertisers has yet been refused access to the columns of the Journal because of their use of WEOL.

These are the facts upon which the Government predicates its charges, foremost of which is the charge of an attempt to monopolize.

The position of the Journal as the only significant medium of newspaper advertising in the City of Lorain may not, in and of itself, have constituted monopolization within the meaning of the Sherman Act, although it is a monopoly in common parlance. But the abuse of the power inherent in its position to compel a customer boycott of WEOL is a different matter. For "the use of monopoly power, however lawfully acquired, to foreclose competition, to gain a competitive advantage, or to destroy a competitor, is unlawful." U.S. v. Griffith, 334 U.S. 100, 107.

The defendants have urged upon the Court, in another connection, the principle that a single trader has a right to deal or to refuse to deal with whomever it pleases for whatever reason it pleases, so long as it does not combine with others to achieve its end. The classic statement of that doctrine recognized the right only in "the absence of any purpose to create or maintain a monopoly". U.S. v. Colgate & Co., 250 U.S. 300, 307. The Journal admittedly has a right to select its advertisers for good reason or without reason, but it has no right in pursuit of a monopoly [fol. 1181] to require them not to deal with a competitor.

Where that is the purpose and design with which the defendants act, it is legally immaterial whether the course of action is or might be successful. As a practical matter no enterprise would singlehandedly embark upon or persist in such behavior unless attainment were a possibility. The success crowning the Journal's efforts does not result from competition in the healthy sense of superior business skill and efficiency, but from the fact that while the Journal and WEOL are competitors, there is an area where the services they provide are complementary rather than competitive in nature. A customer rebuked by one does not have entire satisfaction merely because he may resort to the other. The Journal has used this leverage to prevent any encroachment upon its supremacy in the field where WEOL is in strict competition with it.

The defendants do not in effect deny that they have attempted to monopolize, but they seek to avoid the ban of the Sherman Act on the ground that only a local monopoly and not a monopoly of interstate commerce was sought. Assume that a monopoly of the business of selling news locally does not involve a monopoly of the interstate channels through which that "commodity" comes to Lorain. And assume further that the monopoly of the business of selling advertising space locally does not constitute a monopoly of interstate business because out-of-state advertisers use that service. See Blumenstock Bros v. Curtiss Publishing Co., 252 U. S. 436. But cf. U. S. v. South-Eastern Underwriters Assn., 322 U. S. 533. Even under these assumptions it does not follow that the defendants' attempt to monopolize the [fol. 1182] business of selling news and advertising space locally is beyond the reach of the Sherman Act.

Local monopolies are proscribed by the Act where they are achieved or sought by restraint of interstate commerce.

Stevens Co. v. Foster & Kleiser, 311 U. S. 255; William Goldman Theaters, Inc. v. Loews, Inc., 150 F. (2d) 738; White Bear Theater Corp. v. State Theater Corp., 129 F. (2d) 600. See, Mandeville Island Farms, Inc. v. American Crystal Sugar Co., 334 U. S. 219, 235-6. In these cases local monopolies were achieved by combination or agreement with, or the exertion of pressure upon out-of-state suppliers to exclude others from a local market. The means through which local monopoly was effectuated "restrained" interstate commerce by restricting the freedom of a local buyer to purchase in the interstate market or the freedom of the interstate seller to sell in the local market.[2]

The means employed by the defendants to achieve their purpose has not in that sense restrained interstate commerce, but the ultimate end here is the destruction of the radio station in all its aspects. Having the plan and desire to injure the radio station, no more effective and more direct device to impede the operations and to restrain the commerce of WEOL could be found by the Journal than to cut off its bloodstream of existence—the advertising revenues which controls its life or demise. And in this Court's judgment WEOL is engaged in interstate commerce and therefore entitled to the protection of the Sherman Act.

It is doubtful whether there exists a purely "intra-state" radio station. "By its very nature broadcasting transcends [fol. 1183] state lines and is national in its scope and importance—characteristics which bring it within the purpose and protection, and subject it to the control, of the commerce clause." Fisher's Blend Station v. State Tax Commission, 297 U. S. 650, 655.[3]

Perhaps a radio station which never broadcasts a program originating outside of the state and which is never heard beyond the boundaries of a single state might, within

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[2] White Bear Theater Corp. v. State Theater Corp., supra, falls into this pattern, for the purchase of the entire supply of the particular commodity blocked the access of a local competitor to the interstate market.

[3] See also, Wilson v. Shuman, 140 F. (2d) 644 (Fair Labor Standards Act); Los Angeles Broadcasting Co., 4 N. L. R. B. 443 (National Labor Relations Act). On the question of the power of the state to tax the activity of radio broadcasting, see the annotation at 11 A. L. R. (2d) 986.

the concept of the Sherman Act, be treated as a purely local business. Even if that were true, WEOL differs in those two significant features. While WEOL was licensed to serve and primarily serves an area located wholly within the state, the evidence establishes that it can be and is heard in Michigan. Nor can the Court disregard these transmissions as inconsequential, for they have not resulted from a felicitous combination of circumstances on merely a few, sporadic occasions, but have taken place, the Court must conclude from the only line of evidence presented, with a fair degree of regularity.

The transmissions of WEOL which have their origin as broadcast energy outside of Ohio comprise interstate commerce though heard only by listeners within the state, for WEOL is an inseparable link in the chain of an interstate journey which carries the voice of the speaker to the ear of the listener. While these broadcasts of athletic events may represent but a small portion of WEOL's program schedule, they can not be dismissed as trifling. WEOL was licensed in response to a public need and interest, and it must be assumed that, although it may not be the only avenue through which these interstate programs can reach the [fol. 1184] local community, it provides an important medium for this service.

The defendants make much of the fact that they did nothing more than inhibit the intercourse between local merchants and the radio station and proclaim that they had no desire to prevent the radio station's transmissions which come from out of state or which passed across state lines. Here, the defendants ignore the fact that the radio station may be completely driven out of existence by depriving *if* of advertising revenue. A radio station, unlike a newspaper, does not sell the news and entertainment it provides. Advertising revenues support the service provided to the listening public. It is not necessarily true that local merchants are indifferent to whether their advertising messages reach listeners in Michigan, but, even if that be true, it would not follow that those listeners are indifferent to the programs they hear.

While the activities of the defendants may be local in execution, the very existence of WEOL is imperiled by this attack upon one of its principal sources of business and income. Although the Sherman Act is not a panacea to cure

every local commercial evil and hindrance to local competition, the present context of facts offers a situation within its scope, for the attempted monopoly threatens a business which in inseparable characteristics, if not in volume, is undeniably interstate in nature. The Sherman Act is the foundation of economic freedom in interstate commerce and to that end it sweeps aside restrictive practices local in setting which substantially affect an interstate business, U. S. v. Women's Sportswear Manufacturers Assn., 336 U. S. 460. This Court is pressed to the conclusion that radio broadcasting in general, and radio station WEOL in par- [fol. 1185] ticular, is entitled to the protection the Act affords.

The remaining charges of conspiracy to restrain and to monopolize pose a problem to which a great deal of attention has been devoted by both the Government and defendants: namely, whether a conspiracy within the meaning of the Sherman Act can be found to exist between and among a single corporation and the officers and employees who act for it. For the defendants argue that the "conspiracy" here is the formulation of business policy for a single enterprise.

That problem is not presented in connection with the charge of attempted monopolization for a single corporation and the individuals through whom it acts and who shape its intentions can commit that offense. U. S. v. MacAndrews & Forbes Co., 149 Fed. 823, 836, writ of error dismissed 212 U. S. 585; Fleetway, Inc. v. Public Service Interstate Transportation Co., 72 F. (2d) 761, cert. denied 293 U. S. 626.

Defendants urge that the individual corporation has at its disposal only so much commercial strength, which is not altered in effectiveness whether it acts through only one or through more of its officers and employees. And the defendants' argument is in substance that the conspiracy sections of the Sherman Act were designed to strike only at those situations where the economic power exerted has been enhanced by a confederacy of otherwise independent business enterprises and not where coercive restraints are attempted or accomplished by a so-called "single trader".

The Government contends that there is no reason of language why the Sherman Act should receive an interpreta- [fol. 1186] tion different from that which has been given to

other conspiracy statutes.[4] And as for the substantive argument of defendants, the Government presses upon the Court that line of cases which have emphasized the character of the restraint rather than the economic oneness of the offending conspirators.[5]

It has been demonstrated that the monopoly attempted by the Journal—even conceived of as an attempt to monopolize only local business—is proscribed by the Sherman Act. The relief to be granted for that violation of law should terminate all the abuses in which the defendants indulged. This renders the solution of the controversy in respect of the charges of conspiracy of mere academic interest, and makes its determination unnecessary in this instance.

The relief to be granted brings from the defendants an appeal to the constitutional guarantee of a free press. At the outset, it can no longer be denied that newspapers like other businesses are subject to the Sherman Act. Associated Press v. U. S., 326 U. S. 1; Associated Press v. National Labor Relations Board, 301 U. S. 103, 133. The defendants do not contend that the criminal sanctions of the Act would be inapplicable, but they assert that the Court is powerless to issue even a prohibitory injunction restraining them from refusing to accept advertising where the basis for such refusal is the advertiser's use of the radio station, since to do so would involve a "prior restraint" upon their [fol. 1187] freedom to publish or to refuse to publish whatever they wish.

There is no appeal to any Court more apt to strike a responsive chord than an appeal to rights guaranteed by the First Amendment and under no consideration would this Court reach the conclusions here expressed were they instrumental in undermining or even affecting a free press. In the balance of our Constitutional scheme the importance

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[4] Minnisohn v. U. S., 101 F. (2d) 477; Egan v. U. S., 137 F. (2d) 369, cert. denied 320 U. S. 788; Miller v. U. S., 125 F. (2d) 517, cert. denied 316 U. S. 687; See American Medical Association v. U. S., 130 F. (2d) 233, 253.

[5] Schine Theaters, Inc. v. U. S., 334 U. S. 110, 116; U. S. v. Yellow Cab, 332 U. S. 218, 227; U. S. v. General Motors Corp., 121 F. (2d) 376, 404, cert. denied 314 U. S. 618; U. S. v. New York Great A. & P. Co., 173 F. (2d) 79, 87-88. And see Patterson v. U. S., 222 Fed. 599.

of the First Amendment may be such that sanctions consonant with the Commerce Clause and clearly applicable to other enterprises can not be used against a newspaper. Sun Publishing Co. v. Walling, 140 F. (2d) 445, cert. denied 322 U. S. 729.

With all this, the Court can not conceive that the First Amendment renders it impotent to enjoin the defendants' practices. The right of a newspaper to reject advertising arises from the fact that a free press is also a private business. The defendants did not exercise their right of rejection because the advertising offered was offensive in substance or even because the prospective advertisers were not the sort of persons with whom they wished to deal. Their refusal to deal was based solely on a desire to force these advertisers not to continue or to enter into relations with another available mode of communication. This is a vice condemned by the Sherman Act and the evil may be restrained without affecting the operations of the Journal as an organ of opinion and without touching upon the legitimate conduct of its business affairs. Prior restraint on the substance of expression is one thing; injunctive relief against the repetition of the commercial abuse proved here is quite another.

[fol. 1188] It would be strange indeed to pervert the liberty proclaimed by the First amendment into a license for the continuation of a dictatorial course of action designed to suppress another and equally important instrumentality of information and expression. The purposes sought to be served by that Amendment would not survive many such paradoxes.

The United States is entitled to relief.

In conformity with Rule 4B of this Court, findings of fact and conclusions of law will be submitted and the Government will likewise submit a proposed form of decree.

(S.) Freed, United States District Judge.

August 29, 1950.

[fol. 1189] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

DEFENDANTS' PROPOSED FINDINGS OF FACT—Lodged April 28, 1950

1. Each of the individual defendants is an inhabitant of the Eastern Division of the Northern District of Ohio.

2. Defendant The Lorain Journal Company is a corporation organized under and existing by virtue of the laws of the State of Ohio. It transacts and has places of business in the cities of Cleveland, Ohio and Lorain, Ohio, both within the Eastern Division of the Northern District of Ohio.

3. The Lorain Journal Company publishes in the City of Lorain in Lorain County, Ohio, a daily (excluding Sunday) newspaper of general circulation known as the Lorain Journal and Times-Herald (hereinafter referred to as the Journal).

4. Defendant, Samuel A. Horvitz, at all times from early in the year 1934 to date, has been the Vice-President, Secretary and a director of The Lorain Journal Company. For some time prior to the time in 1934 when he became Vice-President, he was President and director of The Lorain Journal Company.

5. Defendant, Isadore Horvitz, at all times from early in the year 1934 to date, has been President, Treasurer and a director of The Lorain Journal Company. For some time prior to the time in 1934 when he became President, he was Vice-President and a director of The Lorain Journal Company.

6. Defendant, D. P. Self, at all times from March, 1947 to date, has been Business Manager of the Journal.

7. Defendant Frank Maloy for some years has been and now is the Editor of the Journal.

[fol. 1190] 8. The Journal is the only newspaper of general daily (excluding Sunday) circulation published in Lorain, Ohio. It reaches 99 per cent of the families in that city.

9. The Cleveland Plain Dealer, The Cleveland Press and The Cleveland News are daily newspapers distributed in substantial numbers in the City of Lorain and compete with

the Lorain Journal in dissemination of news and national advertising.

10. Numerous radio stations in Cleveland, and other cities in Ohio, and in other states, broadcast programs and advertising regularly heard in the City of Lorain; these stations compete with the Lorain Journal in the dissemination of news and national advertising in the City of Lorain.

11. Numerous magazines and newspapers published in Ohio and other states, are sold and distributed in Lorain. These publications disseminate news and national advertising in the City of Lorain.

12. Prior to 1933 a daily newspaper known as the Times-Herald, competing with the then Lorain Journal, was published and circulated in the City of Lorain.

13. In December, 1932 the defendant, The Lorain Journal Company, represented by Samuel A. Horvitz, acting solely on behalf of defendant company, purchased the assets of the Times-Herald as a result of a buy or sell offer made by the then owners of the Times-Herald. This paper was acquired in the ordinary course of business with no intent on the part of any of the defendants to monopolize the field of newspaper publishing in Lorain.

14. From December, 1932 to date it has been the policy of the defendants to maintain the Journal in a strong competitive position, but the defendants have not intended nor have they acted to prevent others from establishing competing newspapers or other media for the dissemination of news and advertising in the City of Lorain.

15. The Chronicle-Telegram is published by the Lorain County Printing and Publishing Company, a corporation. It is the only newspaper of general daily (excluding Sunday) circulation published in the City of Elyria in Lorain County. The total daily circulation of the Chronicle-Telegram is approximately 15,956 copies of which none is sold by carrier or on newsstands in the City of Lorain.

[fol. 1191] 16. No unwritten standing agreement or any other type of agreement exists between the defendant, The Lorain Journal Company, and the Chronicle-Telegram pursuant to which (1) the Chronicle-Telegram is not circulated in Lorain and the Journal does not attempt to increase its circulation in Elyria; and (2) the Chronicle-Telegram does not accept advertising from Lorain merchants and the Journal does not solicit advertising from Elyria merchants.

17. Defendant, Samuel A. Horvitz, has made no attempt to purchase the Chronicle-Telegram and has no understanding with its present owners whereby he has first option to purchase the newspaper should it be offered for sale.

18. The Lorain Sunday News is the only Sunday newspaper of general circulation published in the City of Lorain, Ohio. It has a weekly circulation of approximately 3,356 of which 3,167 copies are sold in the City of Lorain.

19. The policy of the defendants towards the Lorain Sunday News has been one of aggressive competition and pursuant to this policy, defendants have used ordinary, reasonable and ethical methods of salesmanship in competing with the Sunday News in the soliciting of local advertising in Lorain. The defendants have not declined to renew advertising contracts with Sears, Roebuck and Company or other Lorain advertisers because they advertised in the Lorain Sunday News. The refusal to renew the advertising contract of Sears, Roebuck and Company resulted from the course of conduct of the local manager of that company directed against the Lorain Sunday News and the advertising contract of that company with the Journal was renewed as a result of the settlement of the difference between that company and the Journal. Defendants have not induced advertisers in the Sunday News to discontinue that newspaper as a medium for publication of their advertisements by threatening to discontinue accepting advertisements of such local merchants in the Journal.

20. The radio broadcasting stations having call letters WEOL and WEOL-FM are owned and operated by the Elyria-Lorain Broadcasting Company, a corporation. Said stations have broadcast daily commencing October 17, 1948, over frequencies of 930 kilocycles and 107.6 megacycles, respectively. Defendants' principal studio and its transmitter are located in Elyria; it has a small bra-ch studio manned by only two employees in Lorain, Ohio.

[fol. 1192] 21. In operating said radio stations, the Elyria-Lorain Broadcasting Company competes with the defendant, The Lorain Journal Company, in the dissemination of news and advertising.

22. At all times since WEOL and WEOL-FM commenced broadcasting, defendants have considered it an Elyria institution and a media of advertising which tends to detract from the Lorain market area business which ordi-

narily is channeled to that area. It has been the policy of defendants to protect the Lorain market area by endeavoring to persuade Lorain merchants to refuse to use an Elyria advertising media which will tend to withdraw business from Lorain. In attempting to so persuade local advertisers, defendants have refused to accept advertisements for the Journal from those merchants located in the Lorain trading area who advertise over WEOL and WEOL-FM. Pursuant to this policy, defendants have cancelled advertising contracts of certain of the local merchants who utilized or were about to utilize WEOL and WEOL-FM as advertising media. Defendants advised other advertisers in the local trading area of Lorain that their advertising would be cancelled if they utilized WEOL and WEOL-FM as advertising media. Many of the local merchants refrained from advertising over WEOL and WEOL-FM. Others continued to advertise over the radio.

23. Merchants who desired to advertise over WEOL and WEOL-FM but refrained from or ceased *od*ing so because of the activities of the defendants all operated local, intrastate businesses.

24. In each instance involving cancellation of advertising or refusal to accept advertising, the local merchant in the Lorain trading area was the sole party to the advertising contract with the Journal. In the case of some of the merchants selling nationally advertised goods, a portion of the costs of the local merchants advertising was credited to said local merchant by the manufacturer of the nationally advertised goods sold by him. The local merchants in all cases arranged for his advertising and paid the Journal for its costs. In some instances the local merchants received copy or mats from the national advertiser which they in turn would furnish to the Journal to be utilized in publishing his ad; in a few instances the out of state manufacturer would supply such materials directly to the Journal to be used in making up such local ads.

23. The defendant, The Lorain Journal Company, is a party to contracts with the United Press Association, International News Service and Associated Press, pursuant to [fol. 1193] which it obtains from those news services national and world news and events. The news supplied by these services is gathered throughout the world and sent by teletype to the local distribution office of such wire service

located in Columbus or Cleveland, Ohio. At such local office news is edited, deleted and processed and then relayed by intrastate wries to the Journal.

26. Under contracts with organizations outside Ohio, the defendant, The Lorain Journal Company, obtains features, including comics, cartoons and syndicated columns for daily publication.

27. The Defendant, The Lorain Journal Company, is a party to a contract with a manufacturer of newsprint located outside of Ohio pursuant to which approximately $114,000 worth of newsprint was shipped in 1949 in foreign and interstate commerce to the Journal.

28. Revenues derived from the publication of advertisements accounted for approximately two-thirds of the gross income of the defendant, The Lorain Journal Company, in 1949, and approximately 10% of that portion of its income was derived from advertising by national advertisers.

29. The defendant, The Lorain Journal Company, is a party to many contracts with national advertisers or their agents located outside the State of Ohio. The same is true of station WEOL and WEOL-FM, the Elyria Chronicle-Telegram, and Sunday News. The defendants have never refused or threatened to refuse to contract for advertising with any national advertisers or its agents located outside the State of Ohio nor have they in any way restrained the contracting for such advertising of national advertisers or their agents with any competing media.

30. The Chronicle-Telegram is a party to a contract with United Press Associations pursuant to which it obtains, through the channels of interstate commerce, news of events originating all over the world.

31. The Chronicle-Telegram is a party to a contract with a manufacturer of newsprint located outside of Ohio pursuant to which approximately $82,000 worth of newsprint was shipped in 1949 in foreign and interstate commerce to the Chronicle-Telegram.

32. A substantial part of the income of the Chronicle-Telegram is derived from advertising the sale of goods and [fol. 1194] services pursuant to national advertising contracts between it and advertisers and their agencies located outside the State of Ohio. Pursuant to these contracts, there is a continuous flow in interstate commerce of advertising copy, mats, checks and other materials.

33. A small part of the income of the Sunday News is derived from advertising the sale of goods and services pursuant to national advertising contracts between it and advertisers and their agencies located outside the State of Ohio. Pursuant to these contracts, there is a continuous flow in interstate commerce of advertising copy, mats, checks and other materials.

34. Under contracts with organizations outside Ohio, the Sunday News obtains in interstate commerce comics and matrixes for weekly publication.

35. WEOL and WEOL-FM are licensed to serve the communities of Elyria, Lorain, Oberlin and surrounding territories. Its broadcasts are intended to reach only a few counties in the State of Ohio and it represents to prospective advertisers that its broadcasts reaches only counties entirely within the State of Ohio. Its broadcast-, in all instances, except a few isolated sports programs, originate in its studios. Some of these broadcasts have been heard in Michigan and Pennsylvania.

36. Substantially all of the income of the Elyria-Lorain Broadcasting Company is derived from payments for its broadcasts of advertisements of the sale of goods and services and a substantial part of this income is derived from broadcasts advertising the sale of goods and services pursuant to advertising contracts between it and advertisers or their agencies located outside the State of Ohio. Pursuant to these advertising contracts, there is a continuous flow in interstate commerce of advertising copy, transcriptions, checks and other materials.

37. WEOL and WEOL-FM broadcast programs advertising the sale of goods and services by suppliers outside Ohio as a result of which orders are received by these suppliers from residents in Ohio ordering the shipment of the goods and services in interstate commerce from the out-of-state suppliers direct to said Ohio residents.

38. A substantial portion of the boradcasts of WEOL and WEOL-FM are of music broadcast by means of electrical transcriptions which are leased and shipped to the Elyria-Lorain Broadcasting Company in interstate commerce by the suppliers thereof. Most or all of these [fol. 1195] transcriptions are copyrighted as a result of which the Elyria-Lorain Broadcasting Company makes substantial payments annually in interstate commerce to the holders of the copyrights thereon.

39. A substantial portion of the broadcast time of WEOL and WEOL-FM is devoted to the broadcast of news. This news is supplied by the United Press Association in the same manner as is related in paragraph 25.

40. The individual defendants, Samuel A. Horvitz, Isadore Horvitz, Frank Maloy and D. P. Self, have at all times acted solely as officers and employees of the Lorain Journal for the sole benefit and purposes of the Lorain Journal Company.

41. Defendants have not at any time combined and conspired to restrain trade and commerce among the several states.

42. Defendants have not at any time combined and conspired to monopolize trade and commerce among the several states.

43. Defendants have neither jointly or severally attempted to monopolize trade and commerce among the several states.

—— ——, U. S. District Judge.

[fol. 1196] [Acknowledgement of Service omitted]

[fol. 1197] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

DRAFT OF FINAL JUDGMENT PROPOSED BY PLAINTIFF—Lodged September 28, 1950

Plaintiff, United States of America, filed its complaint herein on September 22, 1949 and filed its amended complaint on January 4, 1950. The defendants filed their answers to said complaint on October 11, 1949, and to said amended complaint on January 13, 1950. This cause came on for trial March 1, 1950, and trial was completed on March 14, 1950. The Court filed its opinion August 29, 1950 and on Nov. —, 1950 filed its findings of fact and conclusions of law, finding and adjudging the defendants to have violated Section 2 of the Sherman Act.

Now, Therefore, it is hereby Ordered, Adjudged and Decreed as follows:

[fol. 1198] I

A. When used in this judgment the term "Journal" shall mean the newspaper published by defendant The Lorain Journal Company;

B. The provisions of this judgment applicable to the individual defendants shall apply to the individual defendants and any person, firm, or corporation acting or claiming to act through, under the control of, or for such individual defendants, or any of them;

C. The provisions of this judgment applicable to defendant The Lorain Journal Company shall apply to it. its officers, directors, agents, employees, subsidiaries, successors, assigns, and all other persons acting or claiming to act through, under or for such defendant.

II

Defendants have violated Section 2 of the Act of Congress of July 2, 1890, 26 Stat. 209, 15 U.S.C. Section 2, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, by engaging in an attempt to monopolize trade and commerce among the several States.

III

Defendant The Lorain Journal Company, and the individual defendants are jointly and severally enjoined and restrained from:

A. Acquiring ownership or control of the capital stock or assets of any newspaper or radio broadcasting facility which is in competition with the Journal or with any other newspaper owned or controlled by the defendants or any of them;

B. Refusing to accept for publication or refusing to publish, in a manner non-discriminatory as to price, space, arrangement, location, commencement or period of insertion, or any other terms or conditions:

1. Any advertisement submitted by any person, for the reason, in whole or in part, express or implied, that [fol. 1199] the person submitting the advertisement

advertised, advertises or proposed to advertise in or through any advertising medium other than any newspaper owned or controlled by defendants or any of them, or

2. Any advertisement submitted by any raido broadcasting facility which is in competition with the Journal or with any other newspaper owned or controlled by the defendants or any of them. Defendants may, however, consistent with this subparagraph 2 of paragraph B. of Section III refuse to accept for publication or refuse to publish any advertisement for the reason that the substance of expression contained in said advertisement would, if published, violate any advertising policy of the newspaper provided that said advertising policy is *bona fide*, unlawful, and uniformly adhered to without discrimination by the newspaper;

In any proceeding involving this paragraph B. of Section III, the burden shall be on defendants named in such proceeding to establish to the satisfaction of the Court that they have acted in conformity with the provisions of this paragraph B. of Section III;

C. Accepting for publication or publishing any advertisement or making or adhering to any contract for the publication of advertisements on or accompanied by any condition, agreement or understanding, express or implied:

1. That the advertiser shall not use the advertising medium of any person other than defendant The Lorain Journal Company or any designated newspaper, or

2. That the advertiser use only the advertising medium of defendant The Lorain Journal Company or of any designated newspaper;

D. Fixing a discriminatorily lower price for any advertisement or allowing a discriminatory discount from or rebate upon a price fixed for any advertisement, or allow-[fol. 1200] ing discriminatory options, rights, or privileges pertaining thereto, on or accompanied by any condition, agreement or understanding, express or implied, that the advertiser shall purchase from defendant The Lorain Journal Company or any designated newspaper any specified volume, value, quota or percentage of his required advertising;

E. Entering into, adopting, adhering to or furthering any agreement or course of conduct which has the purpose or effect of making or adhering to any condition, agreement or understanding contrary to the provisions of paragraphs C. or D of this Section III;

F. Cancelling, terminating, refusing to renew or in any manner impairing any contract, agreement or understanding, involving the publication of advertisements, between the defendants, or any of them, and any person for the reason, in whole or in part, that such person advertised, advertises or proposes to advertise in or through any advertising medium other than the Journal or any other designated newspaper. In any proceeding involving this paragraph F. of Section III, the burden shall be upon defendants named in such proceeding to establish to the satisfaction of the Court that they have acted in conformity with the provisions of this paragraph F. of Section III.

IV

Commencing fifteen (15) days after the entry of this judgment and at least once a week for a period of twenty-five (25) weeks thereafter, the defendants shall insert in a newspaper of general daily circulation published in each community where the defendants or any of them own or control a newspaper, a notice which shall fairly and fully apprise the readers thereof of the substantive terms of this judgment and which notice shall be placed in a conspicuous location in the newspaper selected.

[fol. 1201] V

Defendant The Lorain Journal Company, and the individual defendants with respect only to any advertising medium owned or controlled by the individual defendants or any of them, are ordered and directed to:

A. Maintain for a period of five (5) years from the date of this judgment, all books and records, which shall include all correspondence, memoranda, reports and other writings, relating to the subject matter of this judgment;

B. Advise in writing within ten (10) days from the date of this jud-ment any officers, agents, employees, and any other persons acting for, through or under defendants or any of them of the terms of this judgment and that each

and every such person is subject to the provisions of this judgment. The defendants shall make readily available to such persons a copy of this judgment and shall inform them of such availability.

VI

For the purpose of securing compliance with this judgment, and for no other purpose, any duly authorized representative or representatives of the Department of Justice shall, upon written request of the Attorney General or an Assistant Attorney General, and on notice to the defendants reasonable as to time and subject matter made to the principal office of the Journal or of any other advertising medium owned or controlled by any of them, and subject to any legally recognized privilege, be permitted:

A. Access during the office hours of said defendants to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendants relating to any matters contained in this judgment;

B. Subject to the reasonable convenience of said defendants and without restraint or interference from defendants, to interview officers or employees of said defendants, who [fol. 1202] may have counsel present, regarding such matters, provided, however, that no information obtained by the means provided in this Section VI shall be divulged by the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings in which the United States is a party, or as otherwise required by law.

VII

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate in relation to the construction of, or carrying out of this judgment, for the amendment or modification of any of the provisions thereof, or the enforcement of compliance therewith and for the punishment of violations thereof.

VIII

Judgment is entered against the defendants for all costs to be taxed in this proceeding.

Dated: —— —, ——.

—— ——, United States District Judge.

———

[fol. 1203] In the United States District Court

[Title omitted]

Defendants' Proposed Final Judgment—Lodged October 27, 1950

This cause was heard on the issues presented by the pleadings and on the evidence presented at trial.

Now, therefore, it is hereby ordered, adjudged and decreed as follows:

I

Defendant, The Lorain Journal Company, its officers, directors, agents and employees are jointly and severally enjoined and restrained from refusing to accept the advertisements of any local Lorain advertiser, except a competitor, on the sole ground that said advertiser also uses the advertising facilities of WEOL and WEOL-FM.

II

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate in relation to the construction of, or carrying out of this judgment, for the amendment or modification of any of the provisions thereof, or the enforcement of compliance therewith and for the punishment of violations thereof.

III

The memorandum opinion of this Court filed herein on August 29, 1950, is designated as the findings of fact, pur-

[fol. 1204] suant to Rule 52 of the Federal Rules of Civil Procedure.

IV

Judgment is entered against the defendants for all costs to be taxed in this proceeding.

Dated: —— —, ——.

—— ——, United States District Judge.

———

[fol. 1205] [File endorsement omitted]

In the United States District Court

[Title omitted]

Defendants' Objections to Plaintiff's Proposed Findings of Fact: Defendants' Suggestion as to Findings of Fact —Filed October 27, 1950

Defendants object to certain findings of fact submitted by the plaintiff for the reasons stated following each specific objection:

(1) *Plaintiff's finding of fact No. 9.* This finding is not material to the issues in this case. There is no evidence that warrants a finding that the acquisition of the Times-Herald newspaper by The Lorain Journal company in 1932 was in furtherance of any attempt to monopolize any commerce. Without such a connected finding, plaintiff's finding No. 9 to the effect that the Times-Herald was acquired by certain of the defendants herein, *in* wholly irrelevant to any issue in this cause. Further, the evidence will not sustain any finding that the defendant, Samuel A. Horvitz, was acting on his own behalf in the purchase of the Times-Herald.

(2) *Plaintiff's finding of fact No. 12.* This finding is not sustained by the evidence. It was shown in the trial that the Cleveland Plain Dealer and The Cleveland News delivered papers daily in substantial numbers in the City of Lorain, Ohio. It is further suggested that any finding in the substance of that proposed by plaintiff's finding of fact No. 12 should include a further finding that news and national advertising is disseminated in the City of Lorain by numerous media other than daily newspapers.

(3) *Plaintiff's finding of fact No. 16.* There is no direct evidence (and we think there is none that justifies the in-

ference) that the refusal of defendants to accept advertising from those using or about to use the facilities of WEOL and WEOL-FM was pursuant to a plan to eliminate the threat of competition.

[fol. 1206] (4) *Plaintiff's finding of fact No. 17.* There is no direct evidence (and we think there is none that justifies the inference) to support a finding that the purpose and intent of defendants was to prevent the Elyria-Lorain Broadcasting Company from obtaining revenue and thereby to destroy the broadcasting company.

(5) *Plaintiff's finding of fact No. 18.* This finding refers to a plan, no proof of which was adduced at the trial of this case. The finding should be limited to the facts upon which evidence was adduced, viz., the cancellation of advertising contracts of fifteen Lorain County advertisers who had advertised or were about to advertise over WEOL and WEOL-FM, and the refusal to accept advertising copy from certain of the Lorain County merchants.

(6) *Plaintiff's finding of fact No. 19.* This finding is too general, is all inclusive and is argumentative.

(7) *Plaintiff's finding of fact No. 20.* This is not material to any issue as such.

(8) *Plaintiff's finding of fact No. 22 and 24.* So far as these findings are concerned with national advertising and with materials moving in interstate commerce incident thereto, there is no proof of any restraint operating against national advertising or any refusal to accept any national advertising. There is absolutely no evidence indicating any attempt to monopolize or monopolization of national advertising in the Lorain area. The only acts proved against defendants was the refusal to accept local advertising from local merchants in Lorain.

(9) *Plaintiff's finding of fact No. 25.* This finding does not convey an accurate account of any facts supported by the evidence. The finding as proposed by the plaintiff carries the connotation that substantial number of sales involving interstate commerce were made through advertising over the broadcasting company's facilities. The evidence does not support such a finding.

(10) *Plaintiff's findings of fact No. 29 and 30.* These are not findings of fact but are actually conclusions of law.

Defendants, in lieu of submitting proposed findings of fact, respectfully suggests that this Court adopt its memo-

[fol. 1207] randum opinion as a statement of the facts found by it, especially since that opinion very succinctly sets forth the facts and grounds upon which the Court bases its judgment and correlates those facts to the legal principles deemed pertinent in this cause.

Respectfully submitted, (S.) Parker Fulton.

(S.) King E. Fauver, 1002 Lorain County Bank Bldg., Elyria, Ohio; (S.) Charles A. Baker, Burgess, Fulton & Fullmer, of Counsel.

[fol. 1208] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed January 5, 1951

Findings of Fact

1. Each of the individual defendants is an inhabitant of the Eastern Division of the Northern District of Ohio.

2. Defendant The Lorain Journal Company is a corporation organized under and existing by virtue of the laws of the State of Ohio. It transacts and has its only places of business in the cities of Cleveland, Ohio and Lorain, Ohio, both within the Eastern Division of the Northern District of Ohio.

3. Defendant The Lorain Journal Company publishes in the City of Lorain, Lorain County, Ohio, a daily (excluding Sunday) newspaper of general circulation known as the Journal and Times-Herald (hereinafter referred to as the Journal).

[fol. 1209] 4. Defendant Samuel A. Horvitz, at all times from early in the year 1934 to date, has been the Vice-President, Secretary and a director of The Lorain Journal Company. For some time prior to the time in 1934 when he became Vice-President, he was President and a director of defendant The Lorain Journal Company.

5. Defendant Isadore Horvitz, at all times from early in the year 1934 to date, has been President, Treasurer and a director of defendant The Lorain Journal Company. For

some time prior to the time in 1934 when he became President, he was Vice-President and a director of defendant The Lorain Journal Company.

6. Defendant D. P. Self, at all times from March 1947 to date, has been Business Manager of the Journal.

7. Defendant Frank Maloy for some years has been and now is the Editor of the Journal.

8. The Journal is the only newspaper of general daily (excluding Sunday) circulation published in Lorain, Ohio. It reaches 99 per cent of the families in that city.

9. Prior to 1933 a daily newspaper known as the Times-Herald, competing with the then Journal, was published and circulated in the City of Lorain. In December 1932, the defendant The Lorain Journal Company, the Mansfield Journal Company, a corporation, and defendant Samuel A. Horvitz jointly purchased the assets of the Times-Herald.

10. The total daily circulation of the Journal is approximately 20,690 copies, of which 13,151 are distributed in the City of Lorain, 7,374 elsewhere in the State of Ohio, and the remaining 165 are shipped from Lorain to subscribers located in other states and elsewhere.

[fol. 1210] 11. There are no newspapers that compete with the Journal as a medium for the dissemination of advertisements by Lorain merchants except for the extremely limited competition provided by the Lorain Sunday News, which is the only Sunday newspaper of general circulation published in the City of Lorain, Ohio. It has a weekly circulation of approximately 3,356, of which 3,167 copies are sold in the City of Lorain.

12. The Journal has no substantial competition from any daily newspaper as a medium for the dissemination of news and national advertising in the City of Lorain.

13. The radio broadcasting stations having call letters WEOL and WEOL-FM are owned and operated by the Elyria-Lorain Broadcasting Company, a corporation. Said stations have broadcast daily commencing October 17, 1948, over frequencies of 930 kilocycles and 107.6 megacycles, respectively. Their broadcasting studios are located in Elyria, Ohio and Lorain, Ohio.

14. In operating WEOL and WEOL-FM, the Elyria-Lorain Broadcasting Company competes, or attempts to compete, with the defendant The Lorain Journal Company in the dissemination of news and advertising.

15. At all times since WEOL and WEOL-FM commenced operations, the defendants have known that a substantial number of the advertisers in the Journal desired to use the facilities of the Elyria-Lorain Broadcasting Company, as well as those of the Journal, as media for the dissemination of their advertisements. In order to promote the sale of their goods and services in Lorain County, it is essential for some of these advertisers to advertise in the Journal. [fol. 1211] 16. At all times since WEOL and WEOL-FM commenced broadcasting it has been the plan of the defendants to eliminate the threat of competition from these stations by refusing to accept advertisements for publication in the Journal from those advertisers in Lorain County who advertise or who the defendants believe are about to commence advertising over WEOL and WEOL-FM.

17. The purpose and intent of the defendants in adopting and carrying out the plan referred to in finding 16 is to prevent the Elyria-Lorain Broadcasting Company from obtaining any advertising revenue from any Lorain merchants and thereby to destroy the Elyria-Lorain Broadcasting Company.

18. Pursuant to the plan referred to in finding 16, defendant The Lorain Journal Company monitored the programs of WEOL and WEOL-FM to learn who was using the advertising facilities of these stations. Thereafter, by letters written by defendant Self, with the authorization of defendants Samuel A. Horvitz and Isadore Horvitz, defendant The Lorain Journal Company cancelled the advertising contracts between it and 15 Lorain County advertisers who had advertised or who were about to commence advertising over WEOL and WEOL-FM. In addition, defendants Self and Maloy, and other Journal representatives, effectuated said plan by informing many advertisers orally that they could not continue to advertise in the Journal if they advertised over WEOL, and by refusing to accept advertising copy proffered by Lorain County merchants who were advertising over WEOL and WEOL-FM.

19. As a result of the defendants' activities referred to in finding 18, many advertisers refrained from advertising over WEOL and WEOL-FM, and consequently most of [fol. 1212] the contracts referred to in finding 18 were reinstated by defendant The Lorain Journal Company.

20. Since October 1948 the Journal has consistently

printed in its news columns the logs of some radio stations situated in Cleveland, Ohio, and has frequently printed advertisements of radio programs to be broadcast by radio stations in Cleveland, Ohio, but the defendants have refused to publish as paid advertisements or otherwise the program logs of radio stations WEOL and WEOL-FM and refused to publish an advertisement submitted by the Elyria-Lorain Broadcasting Company seeking employees to carry on broadcasting operations.

21. News and features gathered from various parts of the United States and other countries are transmitted in foreign and interstate commerce to defendant The Lorain Journal Company for publication in the Journal.

22. Advertising copy, matrixes, checks and other documents and materials are shipped from various parts of the United States in interstate commerce to defendant The Lorain Journal Company pursuant to advertising contracts between the defendant The Lorain Journal Company and national advertisers or their agents.

23. WEOL and WEOL-FM broadcast in interstate commerce and their broadcasts are heard with a degree of regularity by many persons resident in the southeastern portion of the State of Michigan. These broadcasts include commercially sponsored programs soliciting the sale of goods and services.

[fol. 1213] 24. Substantially all of the income of the Elyria-Lorain Broadcasting Company is derived from payments for its broadcasts of advertisements for the sale of goods and services. About 16 per cent of this income is derived from broadcasts advertising the sale of goods and services pursuant to advertising contracts between it and advertisers or their agencies located outside the State of Ohio. Pursuant to these advertising contracts there is a continuous flow in interstate commerce of advertising copy, transcriptions, checks and other documents and materials.

25. In a relatively few instances WEOL and WEOL-FM broadcast programs advertising the sale of goods and services by suppliers outside Ohio. As a result of these broadcasts orders are received by those suppliers from residents in Ohio ordering the shipment in interstate commerce of the goods and services from the out-of-state suppliers direct to said Ohio residents. Many of those merchants who desired to advertise over WEOL and WEOL-FM but who refrained from or ceased doing so because of the activities

of the defendants, occasionally receive specific orders from customers in Lorain County and upon receipt of such orders, forward them to suppliers located outside the State of Ohio. Pursuant to said orders, goods are in some cases shipped in interstate commerce direct to customers located in Ohio and in the other cases said orders are filled by shipments in interstate commerce from the manufacturers to merchants in Lorain County who deliver them to the customers. In some cases the advertising materials used in publishing the advertisements of these merchants come from the merchants' suppliers located outside the State [fol. 1214] of Ohio and are shipped in interstate commerce direct from those out-of-state suppliers to the offices of the Journal.

26. About 65 per cent of the broadcast time of WEOL and WEOL-FM is devoted to the playing of music broadcast by means of electrical transcriptions which are leased and shipped to the Elyria-Lorain Broadcasting Company in interstate commerce by the suppliers thereof. Most or all of these transcriptions are copyrighted, and consequently the Elyria-Lorain Broadcasting Company makes substantial payments annually in interstate commerce to the holders of the copyrights thereon.

27. About 10 to 12 per cent of the broadcast time of WEOL and WEOL-FM is devoted to broadcasts of news, world-wide in coverage, gathered by the United Press Associations from all over the world and sent in interstate commerce by United Press Associations to WEOL and WEOL-FM.

28. WEOL and WEOL-FM customarily broadcast commercially sponsored sports events originating in various states other than the State of Ohio.

29. All the defendants have engaged and are now engaging in an attempt to monopolize local commerce in the daily dissemination of news and advertising in Lorain, Ohio, by destroying WEOL and WEOL-FM, which radio stations are engaged in interstate commerce.

(S.) Freed, United States District Judge.

January 5, 1951.

[fol. 1215] IN THE DISTRICT COURT OF THE UNITED STATES,
NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

[Title omitted]

Conclusions of Law

1. The Court has jurisdiction of the subject matter hereof and of each of the defendants, and the complaint states a cause of action against the defendants under the provisions of the Act of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", as amended, commonly known as the Sherman Act.

2. The defendants have violated and are now violating Section 2 of the Sherman Act by engaging in an attempt to monopolize trade and commerce among the several states within the meaning of Section 2 of the Sherman Act.

(S.) Freed, United States District Judge.

January 5, 1951.

[fol. 1216] IN THE DISTRICT COURT OF THE UNITED STATES,
NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

Civil Action No. 26823

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE LORAIN JOURNAL COMPANY, SAMUEL A. HORVITZ, ISADORE HORVITZ, D. P. SELF, and FRANK MALOY, Defendants

FINAL JUDGMENT—January 5, 1951

Plaintiff, United States of America, filed its complaint herein on September 22, 1949 and filed its amended complaint on January 4, 1950. The defendants filed their answers to said complaint on October 11, 1949, and to said amended complaint on January 13, 1950. This cause came on for trial March 1, 1950, and trial was completed on March 14, 1950. The Court filed its opinion August 29, 1950 and on January 5, 1951 filed its findings of fact and conclusions of law, finding and adjudging the defendants to have violated Section 2 of the Sherman Act.

Now, therefore, it is hereby ordered, adjudged and decreed as follows:

I

The provisions of this judgment applicable to defendant The Lorain Journal Company shall apply to it, its officers, directors, agents, employees and attorneys and to those persons in active concert or participation with it or them who receive actual notice of this judgment by personal service or otherwise.

II

Defendants have violated Section 2 of the Act of Congress of July 2, 1890, 26 Stat. 209, Title 15 U.S.C. § 2, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, by engaging in an attempt to monopolize trade and commerce among the several states.

III

Defendant The Lorain Journal Company is enjoined and restrained from:

A. Refusing to accept for publication or refusing to publish any advertisement or advertisements or discriminating as to price, space, arrangement, location, commence-[fol. 1217] ment or period of insertion or any other terms or conditions of publication of advertisement or advertisements where the reason for such refusal or discrimination is, in whole or in part, express or implied, that the person, firm or corporation submitting the advertisement or advertisements has advertised, advertises, has proposed or proposes to advertise in or through any other advertising medium.

B. Accepting for publication or publishing any advertisement or making or adhering to any contract for the publication of advertisements on or accompanied by any condition, agreement or understanding, express or implied:

1. That the advertiser shall not use the advertising medium of any person, firm or corporation other than defendant The Lorain Journal Company;

2. That the advertiser use only the advertising medium of defendant The Lorain Journal Company;

C. Cancelling, terminating, refusing to renew or in any manner impairing any contract, agreement or understanding, involving the publication of advertisements, between the defendants, or any of them, and any person, firm or corporation for the reason, in whole or in part, that such person, firm or corporation advertised, advertises or proposes to advertise in or through any advertising medium other than the newspaper published by the corporate defendant.

IV

Commencing fifteen (15) days after the entry of this judgment and at least once a week for a period of twenty-five weeks thereafter the corporate defendant shall insert in the newspaper published by it a notice which shall fairly and fully apprise the readers thereof of the substantive terms of this judgment and which notice shall be placed in a conspicuous location.

V

Defendant The Lorain Journal Company and the individual defendants are ordered and directed to:

A. Maintain for a period of five (5) years from the date of this judgment, all books and records, which shall include all correspondence, memoranda, reports and other writings, relating to the subject matter of this judgment;

B. Advise in writing within ten (10) days from the date of this judgment any officers, agents, employees, and any other persons acting for, through or under defendants or any of them of the terms of this judgment and that each and every such person is subject to the provisions of this [fol. 1218] judgment. The defendants shall make readily available to such persons a copy of this judgment and shall inform them of such availability.

IV

For the purpose of securing compliance with this judgment, and for no other purpose, any duly authorized representative or representatives of the Department of Justice shall, upon written request of the Attorney General or an Assistant Attorney General, and on notice reasonable as to time and subject matter made to the principal office of the

Lorain Journal Company, and subject to any legally recognized privilege, be permitted:

A. Access during the office hours of said corporate defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said corporate defendant relating to any matters contained in this judgment;

B. Subject to the reasonable convenience of said corporate defendant and without restraint or interference from defendants, to interview officers or employees of said defendants, who may have counsel present, regarding such matters, provided, however, that no information obtained by the means provided in this Section VI shall be divulged by the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings in which the United States is a party, or as otherwise required by law.

VII

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate in relation to the construction of, or carrying out of this judgment, for the amendment or modification of any of the provisions thereof, or the enforcement of compliance therewith and for the punishment of violations thereof.

VIII

Judgment is entered against the defendants for all costs to be taxed in this proceedings.

(S.) Freed, United States District Judge.

January 5, 1951.

[fol. 1219] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed January 8, 1951

Considering themselves aggrieved by the final decree and judgment of this Court entered on January 5th, 1951, The Lorain Journal Company, a corporation, Samuel A. Horvitz, Isadore Horvitz, D. P. Self and Frank Maloy, defendants herein, do hereby pray that an appeal be allowed to the Supreme Court of the United States from said final decree and judgment and from each and every part thereof; that citation be issued in accordance with law; that an order be made with respect to the appeal bond to be given by said defendants, and that the material parts of the records, proceedings and papers upon which said final judgment and decree was based duly authenticated be sent to the Supreme Court of the United States in accordance with the rules in such case made and provided.

Respectfully submitted, (S.) King E. Fauver, Charles A. Baker, Parker Fulton, Robert M. Weh, Counsel for Defendants-Appellants.

Acknowledgment omitted.

[fol. 1220] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed January 8, 1951

The defendants herein having made and filed their petition praying for an appeal to the Supreme Court of the United States from the final judgment and decree of this Court in this cause entered on January 5th, 1951, and from each and every part thereof, and having presented their assignments of error and prayer for reversal and their statement as to the jurisdiction of the Supreme Court of the United States on appeal pursuant to statutes and rules of

the Supreme Court of the United States in such cases made and provided,

Now, therefore, it is hereby ordered that said appeal be and the same is hereby allowed as prayed for.

It is further ordered that the amount of the appeal bond be and the same is hereby fixed in the sum of $250.00, with good and sufficient surety, and shall be conditioned as may be required by law.

It is further ordered that citation shall issue in accordance with law.

(S.) Freed, Judge.

Receipt acknowledged 1/8/51, (S.) Norman H. Seidler, Counsel for Plaintiff.

[fol 1221] Bond on appeal for $250 filed January 8, 1951, omitted in printing.

[fol. 1222] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION FOR STAY—Filed January 8, 1951

The Lorain Journal Company, Samuel A. Horvitz, Isadore Horvitz, D. P. Self and Frank Maloy, appellants herein, having been allowed an appeal to the Supreme Court of the United States from the final judgment and decree of this Court in this cause entered on January 5th, 1951, and an appeal bond in the amount fixed in the order allowing said appeal having been filed and approved by this Court, do hereby pray that the judgment and decree of January 5th, 1951 be stayed in all respects pending the final disposition of said appeal and that an order be made with respect to the bond or with respect to such other conditions or surety that this Court requires be given for such stay.

Respectfully submitted, (S.) King E. Fauver, (S.) Charles A. Baker, (S.) Parker Fulton, (S.) Robert M. Web, Counsel for Defendants-Appellants.

[Acknowledgment omitted]

[fol. 1223] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING STAY—Filed January 9, 1951

An order having been entered on January 8, 1951, allowing the defendants an appeal to the Supreme Court of the United States from the final judgment of this Court entered on January 5, 1951; and the defendants' having applied to have execution of said judgment stayed in all respects, pending the final disposition of said appeal; and the parties having been heard on said application for a stay, and with the consent of the plaintiff and the exceptions of the defendants duly noted;

Now, therefore, it is hereby ordered that said application for Stay be and the same hereby is denied except that Section IV and Section V(B) of said final judgment reading as follows:

IV

Commencing fifteen (15) days after the entry of this judgment and at least once a week for a period of twenty-five weeks thereafter the corporate defendant shall insert in the newspaper published by it a notice which shall fairly and fully apprise the readers thereof of the substantive terms of this judgment and which notice shall be placed in a conspicuous location.

[fol. 1224] V

B. Advise in writing within ten (10) days from the date of this judgment any officers, agents, employees, and any other persons acting for, through or under defendants or any of them of the terms of this judgment and that each and every such person is subject to the provisions of this judgment. The defendants shall make readily available to such persons a copy of this judgment and shall inform them of such availability.

are stayed pending the final disposition of said appeal.

(S.) Freed, United States District Judge.

January 9, 1951.

Notice by Clerk hereby waived.

(S.) Norman H. Seidler, Counsel for plaintiff.

[fol. 1225] Citation in usual form showing service on Norman H. Seidler omitted in printing.

[fol. 1226] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed January 8, 1951

Defendants in the above entitled cause, in connection with their appeal to the Supreme Court of the United States, hereby file the following assignments of error upon which they will rely in their prosecution of said appeal from the final judgment of the District Court entered on January 5, 1951.

The District Court erred:

1. In its findings of fact 11 to 29, both inclusive.
2. In its conclusions of law 1 and 2.
3. In the final judgment as entered January 5, 1951.
4. In deciding that Radio Stations WEOL and WEOL-FM were and are engaged in interstate commerce.
5. In deciding that defendants violated Section 2 of the Act of Congress of July 2, 1890, 26 Stat. 209, Title 15, U.S.C. Sec. 2, commonly called the Sherman Anti-trust Law.
6. In deciding that defendants' refusal to accept purely local advertising from those advertisers, or enter into contracts with local advertisers, in the local Lorain area who used or proposed to use the facilities of Radio Stations WEOL and WEOL-FM, constituted an attempt to monopolize interstate commerce, in violation of Section 2 of the Sherman Anti-trust Act.
7. In deciding that it was defendants' purpose to destroy the radio stations above mentioned by enjoining defendant The Lorain Journal Company from:

> "A. Refusing to accept for publication or refusing to publish any advertisement or advertisements or discriminating as to price, space, arrangement, location, commencement or period of insertion or any other [fol. 1227] terms or conditions of publication of advertisement or advertisements where the reason for such refusal or discrimination is, in whole or in part, express or implied, that the person, firm or corporation submitting the advertisement or advertisements has advertised, advertises, has proposed or proposes to advertise in or through any other advertising medium.

"B. Accepting for publication or publishing any advertisement or making or adhering to any contract for the publication of advertisements on or accompanied by any condition, agreement or understanding, express or implied:

"1. That the advertiser shall not use the advertising medium of any person, firm or corporation other than defendant The Lorain Journal Company;

"2. That the advertiser use only the advertising medium of defendant The Lorain Journal Company;

"C. Cancelling, terminating, refusing to renew or in any manner impairing any contract, agreement or understanding, involving the publication of advertisements, between the defendants, or any of them, and any person, firm or corporation for the reason, in whole or in part, that such person, firm or corporation advertised, advertises or proposes to advertise in or through any advertising medium other than the newspaper published by the corporate defendant."

8. By deciding that defendant The Lorain Journal Company commencing fifteen days after the entry of said judgment, and at least once a week for a period of twenty-five weeks thereafter should and "shall insert in the newspaper published by it a notice which shall fairly and fully apprise the readers thereof of the substantive terms of this judgment and which notice shall be placed in a conspicuous location."

9. By ordering and directing The Lorain Journal Company for a period of five years or for any period after the judgment, to make available all of its books and records, correspondence, memoranda, reports and other writings relating to the subject matter of said judgment.

10. In requiring defendant The Lorain Journal to advise, in writing, within ten days from the date of said judgment, or within any time thereafter, all of its officers, agents, employees and any other persons acting for it, that they and each of them are and is subject to the provisions of said judgment, as provided in Sections V and VI of said judgment entry.

11. By having incorporated in said judgment decree punitive—penalty provisions and policing provisions, which con-

travene the Constitution of the United States of America and its Amendments, including particularly Articles I, IV, V, VI and VII of the Amendments to the Constitution.

[fol. 1228] Wherefore, defendants pray that the final decree of the District Court be reversed, and for such other relief as the Court may deem fit and proper.

(S.) King E. Fauver, (S.) Charles A. Baker, (S.) Parker Fulton, (S.) Robert M. Web, Counsel for Defendants-Appellants.

[Acknowledgment omitted]

[fol. 1229] Motion to Have Original Records in the District Court Transmitted to the Clerk of the Supreme Court of the United States, as Part of the Record upon Appeal—Omitted

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[fols. 1230-1265] [File endorsement omitted]

In the United States District Court

[Title omitted]

Order That Original Records Be Forwarded to Supreme Court—Filed January 8, 1951

In accordance with the provisions of the precipe herein, and pursuant to the motion to transmit the original record on appeal of the above entitled cause to the Supreme Court of the United States,

It Is Hereby Ordered, that the documents and papers received in evidence in the District Court in the trial of this cause, and the stenographer's transcript of the proceedings held before this Court may be forwarded, in lieu of copies of such documents and papers, to the Clerk of the Supreme Court of the United States as a part of the transcript of the record on appeal herein.

(S.) Freed, Judge.

Dated: 1/8/51.
Receipt acknowledged 1/8/51.

(S.) Norman H. Seidler, Counsel for Plaintiff.

[fols. 1266-1267] Precipe—Omitted

[fol. 1268-1269] STIPULATION AS TO RECORD AMENDING DEFENDANTS' PRECIPE DESIGNATING PAPERS FOR APPEAL—Omitted

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[fol. 1270] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR NEW TRIAL AND EXCEPTIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed January 8, 1951

Defendants, each and all of them, respectfully move this Court for a new trial because—

1) The final judgment herein is contrary to law,
2) The final judgment is contrary to the evidence,
3) Other errors apparent upon the face of the record,

and respectfully except to the findings of fact reached by this Court because those findings, save those relating to a description of the several defendants, are contrary to and not supported by the evidence; and except to the conclusions of law because they are not fully supported by the findings of fact, are not at all supported by the evidence in and record of this case, and because those conclusions are erroneous and contrary to law.

(S.) King Fauver, Charles A. Baker, Parker Fulton, Robert M. Weh, Counsel for Defendants.

ACKNOWLEDGMENT—Omitted

[fol. 1271] MEMORANDUM

The matters embraced by the issues in this lawsuit, both factual and legal, were fully canvassed by the motion for preliminary and temporary injunction during the trial upon the merits and at the conclusion of the trial upon the merits, so that any present written presentation would be repetitive.

Respectfully submitted, (S.) Parker Fulton, of Counsel.

[fol. 1272] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER—Filed January 9, 1951

Upon consideration, it is ordered that defendant's motion for a new trial is hereby overruled.

(S.) Freed, United States District Judge.

[fol. 1273] ORDER ENLARGING TIME FOR DOCKETING APPEAL IN THE SUPREME COURT OF THE UNITED STATES—Omitted

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[fol. 1274] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1275] [File endorsement omitted]

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. 669

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed April 19, 1951

Pursuant to Rule 13, Paragraph 9, of this Court:

(a) Appellants, for their statement of points upon which they intend to rely, adopt the points contained in their assignment of errors heretofore filed.

(b) Appellants designate for printing by the Clerk of this Court the entire record herein including the entire transcript of testimony.

King Fauver, Elyria, Ohio; Charles A. Baker, 1250 Terminal Tower, Cleveland, Ohio; Parker Fulton, 1250 Terminal Tower, Cleveland, Ohio, Counsels for Defendants-Appellants.

Certificate of Service omitted.

[fol. 1276] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 26

STIPULATION—Filed July 12, 1951

It is hereby stipulated between counsel for the respective parties hereto that the following portions only of the stenographic transcript and exhibits shall be printed as part of the record on appeal:

Print stenographic transcript p. 22 to 92 inclusive.
P. 163, line 11 to p. 179.
P. 193-218.
P. 325-474.
P. 478-487.
P. 502-619.
P. 626, last 7 lines.
P. 630-768.
P. 805-860.
P. 870-899.
P. 907, last 14 lines.
P. 908-931.
P. 946, last 8 lines.
P. 947-1092.

Print only the following parts of Exhibit No. 1: Caption; Finding of Fact 37 (on p. 13); Conclusion 6 (on p. 16).
[fol. 1277] Print Exhibit No. 2
56
117
119
132
139
140 (2 pages)
147 (pages 1 and 7)
148 (pages 1 and 7)
149 (pages 1, 14 and 15)
169
254
255
258
259

It is stipulated that the parties hereto may quote, and refer to, in their briefs and on oral argument, any portion of the record on appeal in this case on file in the Office of the Clerk whether or not said portion is included in the printed record on appeal, and it is further stipulated and agreed that either party may print as an appendix to its brief such portions of the record on file in the Office of the Clerk as are not included in the printed record on appeal.

William E. Leahy, William J. Hughes, Jr., Parker Fulton, Attorneys for Appellants. Philip B. Perlman, Solicitor General of the United States, Attorney for Appellee.

11 July, 1951.

[fol. 1278] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. 669

ORDER—April 30, 1951

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Clark took no part in the consideration or decision of this question.

Endorsed on cover: File No. 55,175, U. S. D. C., Northern Ohio. Term No. 26. The Lorain Journal Company, Samuel A. Horvitz, Isadore Horvitz, et al., Appellants, vs. The United States of America. Filed April 9, 1951. Term No. 26, O. T. 1951.